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# TEXAS REGISTER

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*Zoe Delafosse  
9th Grade*

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

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# Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the *Texas Register's* Internet site:  
<http://www.sos.state.tx.us/open/index.shtml>

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 463-5561 in Austin. For out-of-town callers our toll-free number is 800-226-7199. Or request a copy by email: [register@sos.state.tx.us](mailto:register@sos.state.tx.us)

For items ***not*** available here, contact the agency directly. Items not found here:

- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.

<http://www.oag.state.tx.us/opinopen/opengovt.shtml>

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

Additional information about state government may be found here:  
<http://www.state.tx.us/>

...

**Meeting Accessibility.** Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

# THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following:  
Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from  
the Attorney General's Internet site <http://www.oag.state.tx.us>.

Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: <http://www.oag.state.tx.us/opinopen/opinhome.shtml>.)

## Request for Opinion

**RQ-0581-GA**

### Requestor:

The Honorable Rex Emerson

Kerr County Attorney

County Courthouse, Suite BA-103

700 Main Street

Kerrville, Texas 78028

Re: Jurisdiction of a statutory county court judge to render judgment in a felony case assigned him by the presiding judge of the administrative region (RQ-0581-GA)

### Briefs requested by May 21, 2007

For further information, please access the website at [www.oag.state.tx.us](http://www.oag.state.tx.us) or call the Opinion Committee at (512) 463-2110.

TRD-200701554

Stacey Napier

Deputy Attorney General

Office of the Attorney General

Filed: April 24, 2007



## Opinions

**Opinion No. GA-0541**

The Honorable Jane Nelson

Chair, Committee on Health and Human Services

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Whether the Legislature may authorize electronic pull-tab bingo by statute without amending the Texas Constitution (RQ-0547-GA)

## SUMMARY

Texas Constitution article III, section 47(b) authorizes the Legislature to enact legislation permitting charitable entities to conduct bingo games for charitable purposes. The constitutional authorization for charitable bingo does not include "electronic pull-tab bingo," which an unenacted bill of the Seventy-ninth Regular Legislative Session would have authorized. The proposed legislation would be unconstitutional under article III, section 47(a).

### Opinion No. GA-0542

The Honorable Rob Baiamonte

Goliad County Attorney

Post Office Box 24

Goliad, Texas 77963

Re: Whether abandoned vehicles seized by the county sheriff must be disposed of pursuant to Transportation Code chapter 683 or Code of Criminal Procedure article 18.17 (RQ-0549-GA)

## SUMMARY

Transportation Code chapter 683 does not apply to the disposition of motor vehicles that a county sheriff seizes immediately after the occupants flee the vehicles when stopped by law enforcement. The seized motor vehicles, which are neither held as evidence in a pending case nor ordered to be destroyed or returned to the rightful owners, may be disposed of pursuant to Code of Criminal Procedure article 18.17 if they are (1) seized in connection with the enforcement of the state's criminal laws and (2) not contraband subject to disposition under Code of Criminal Procedure chapter 59.

For further information, please access the website at [www.oag.state.tx.us](http://www.oag.state.tx.us) or call the Opinion Committee at (512) 463-2110.

TRD-200701564

Stacey Napier

Deputy Attorney General

Office of the Attorney General

Filed: April 25, 2007



# PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to

submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

**Symbols in proposed rule text.** Proposed new language is indicated by underlined text. ~~Square brackets and strikethrough~~ indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

## TITLE 1. ADMINISTRATION

### PART 2. TEXAS ETHICS COMMISSION

#### CHAPTER 20. REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES

##### SUBCHAPTER B. GENERAL REPORTING RULES

###### 1 TAC §20.56

The Texas Ethics Commission proposes new §20.56, relating to the reporting of a political contribution in the form of a pledge.

The proposed new §20.56 would clarify the method for reporting pledges of political contributions. The rule would require a pledge of a contribution that is actually received in the reporting period in which it was accepted to be reported on the "political contributions" schedule. The rule also would require that the "date of the contribution" is the date the pledge was accepted.

David A. Reisman, Executive Director, has determined that for each year of the first five years that the rule is in effect there will be no fiscal implication for the state and no fiscal implication for local government as a result of enforcing or administering the rule as proposed. Mr. Reisman has also determined that the rule will have no local employment impact.

Mr. Reisman has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be clarity in what is required by the law.

Mr. Reisman has also determined there will be no direct adverse effect on small businesses or micro-businesses because the rule does not apply to single businesses.

Mr. Reisman has further determined that there are no economic costs to persons required to comply with the rule.

The Texas Ethics Commission invites comments on the proposed rule from any member of the public. A written statement should be mailed or delivered to Natalia Luna Ashley, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed rule may do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period at a commission meeting when the commission considers final adoption of the proposed rule. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or, toll free, (800) 325-8506.

The proposed new §20.56 is proposed under Government Code, Chapter 571, Section 571.062, which authorizes the commission

to adopt rules concerning the laws administered and enforced by the commission.

The proposed new §20.56 affects section 254.031 of the Election Code.

###### §20.56. Reporting a Pledge of a Contribution.

(a) The date of a pledge of a contribution is the date the pledge was accepted, regardless of when the pledge is actually received.

(b) Except as provided by subsection (c), a pledge of a contribution shall be reported on the pledge schedule for the reporting period in which the pledge was accepted.

(c) A pledge of a contribution that is actually received in the reporting period in which the pledge was accepted, shall be reported on the contribution schedule or the loan schedule, as applicable, and in accordance with subsection (a).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 17, 2007.

TRD-200701441

Natalia Luna Ashley

General Counsel

Texas Ethics Commission

Earliest possible date of adoption: June 3, 2007

For further information, please call: (512) 463-5800



## PART 12. COMMISSION ON STATE EMERGENCY COMMUNICATIONS

### CHAPTER 251. REGIONAL PLANS--STANDARDS

#### 1 TAC §251.6

The Commission on State Emergency Communications (CSEC) proposes an amendment to §251.6, concerning guidelines for strategic plans, amendments, and allocation of funds.

The proposed changes are intended to align the rule with CSEC's biennial appropriation from the Texas Legislature, more clearly identify sections of Health and Safety Code, Chapter 771, governing CSEC's authority to allocate appropriated funds, and to shorten the rule by moving procedural requirements into a CSEC Program Policy Statement (PPS).

Paul Mallett, CSEC executive director, has determined that, for each year of the first five years that the rule is in effect, enforcing or administering the rule will result in: (1) No additional



costs or reduction in costs to the state and local governments; (2) No loss or increase in revenue to the state; and (3) Possible changes from the historical percentages of appropriated funds allocated to each Regional Planning Commission (RPC). Whether an RPC's biennial allocation percentage increases or decreases will be determined by various factors including, but not limited to, the amount of 9-1-1 Fees and Surcharge CSEC is appropriated in each of its legislative strategies and the financial needs of the RPC in order to implement these strategies.

Mr. Mallett has also determined that, for each year of the first five years the rule is in effect, the public benefit expected as a result of enforcing the rule will be an overall enhancement of the effectiveness of 9-1-1 service in the RPC program area by aligning the allocating of funds to the RPCs with CSEC's legislative appropriation strategies. The anticipated economic costs to persons who are required to comply with the rule will be borne solely by the RPCs and will depend upon the financial needs of each RPC to implement the legislative appropriation strategies. Mr. Mallett has determined that, although no historical data is available, there appears to be no direct effect on small or micro-businesses.

Comments on the amendment may be submitted in writing to Paul Mallett, Executive Director, Commission on State Emergency Communications, 333 Guadalupe Street, Suite 2-212, Austin, Texas 78701-3942 within 30 days after publication of the proposal in the May 4, 2007, issue of the *Texas Register*.

The amendment is proposed under the Texas General Appropriations Act appropriation of 9-1-1 Fees and Equalization Surcharge to CSEC; and Texas Health and Safety Code, §§771.051, 771.056, 771.071, 771.0711, 771.072, 771.075, 771.0751, 771.077, 771.078, and 771.079 which authorize CSEC to plan, develop, fund, administer, approve, and enhance the provisioning and effectiveness of 9-1-1 service. The proposed amendment is proposed in accordance with the process for rulemaking as prescribed by Texas Government Code, Chapter 2001, Subchapter B.

No other statutes, articles, or codes are affected by the proposed amendment.

*§251.6. Guidelines for Strategic Plans, Amendments, and [Revenue Allocation of Funds.*

(a) Purpose. This [The Commission on State Emergency Communications (Commission) establishes this] rule provides [to provide] guidelines for a regional planning commission (RPC) to follow in developing and [or] amending its regional plan and for [in describing] how appropriated funds are [money] allocated by the Commission on State Emergency Communications (Commission) to the RPCs [is to be allocated in the region].

(b) (No change.)

(c) Regional Plans [Plan Budgets] . Regional plans shall be developed consistent with Health and Safety Code §771.055, the Items of Appropriation in the Texas Legislature's biennial appropriation to the Commission, and Commission rules and policies. Regional plans shall be submitted to the Commission for consideration in accordance with Health and Safety Code §771.056 and Commission rules and policies. [the Administration, Equipment, and Program Budgets approved by the Commission. The Program Budget includes the following four major strategic plan levels (in order of priority):-]

[(1) Level I: The equipment, network, and database equipment and/or services that provide the essential elements of 9-1-1 service; including the maintenance and replacement of equipment-]

[(A) Network-]

[(B) Wireless-]

[(C) Database-]

[(D) Equipment Lease-]

[(E) Language Line; and]

[(F) Equipment Maintenance-]

[(2) Level II: The activities, equipment, and/or services that directly support and enhance 9-1-1 call delivery and data maintenance for the level of service provided to the region-]

[(A) Database Maintenance-]

[(B) MIS-]

[(C) Mapped ALI-]

[(D) PSAP Room Prep-]

[(E) PSAP Training; and]

[(F) Public Education-]

[(3) Level III: The activities, equipment, and/or services that provide auxiliary enhancements to the delivery of 9-1-1 calls and the level of service provided to the region-]

[(A) Network Diversity-]

[(B) PSAP Supplies; and]

[(C) Ancillary Maintenance & Repair]

[(4) Level IV: Use of Revenue in Certain Counties: The activities, equipment, and/or services that provide necessary auxiliary enhancements to the 9-1-1 system of a county eligible under Health and Safety Code section 771.0751 because it has a population over 700,000 or is the county that has the highest population within an RPC participating in the Commission program-]

[(d) Regional Plans: Regional plans developed in compliance with Chapter 771 and Commission Rule 251.1 shall include projected financial operating information for at least the two state fiscal years following submission of the plan; and strategic planning information for at least the five state fiscal years following submission of the plan-]

[(1) The Commission shall establish the format of regional plans for the sake of identifying overall statewide requirements in its implementation-]

[(2) Regional plans shall be consistent with the four major implementation priority levels identified above and with all applicable Commission policies and rules-]

[(3) An RPC shall submit financial reports at least quarterly on a schedule to be established by the Commission. The financial report shall identify actual implementation costs by county, regional plan priority level and component-]

[(4) An RPC shall submit performance reports at least quarterly on a schedule to be established by the Commission. The performance report shall reflect the progress of implementing the RPC's regional plan, including the status of equipment, services and program deliverables; in a format to be determined by the Commission-]

[(d) [(e)] Amendments to Regional Plans. Requests for amendments to regional plans shall be submitted to the Commission for consideration in accordance with Health and Safety Code §771.056 and Commission rules and policies, approval. The Commission shall take action on amendment requests at least four times per fiscal year.

{(1) An RPC may make changes to its approved regional plan to accommodate unanticipated requirements and/or to prevent disruption of its implementation schedule, contingent upon compliance with all Commission policies and procedures.}

{(2) Requests for amendments to the regional plan shall be submitted in writing to the Commission. The documentation required for changes will be submitted according to Commission policy. The Commission shall take action, no fewer than four times annually, on any regional plan amendment request submitted for approval.}

{(3) Emergency situations requiring amendments to regional plans that require additional funding may be presented to the Commission for review and consideration contingent upon the availability of such funds within the Program Budget level priorities in subsection (e) of this section.}

{(c) [(f)] Allocation of Appropriated Funds to an RPC [Revenue].

(1) Service Fee: ~~[allocation--]~~Consistent with Health and Safety Code §§771.056(d), 771.071(f), 771.0711(c), 771.075, 771.0751, 771.077(e), 771.078(b) and (d), and 771.079(c), and the Commission's biennial appropriation from the Texas Legislature, ~~[and 771.078]~~ the Commission shall allocate, by contract, service fee funds [revenue] to an RPC contingent on the availability of appropriated funds.

(2) Equalization Surcharge: Consistent with Health and Safety Code §§771.0711(j), 771.072(d) and (f), 771.075, 771.0751 and 771.078(e), and the Commission's biennial appropriation from the Texas Legislature, the Commission shall allocate, by contract, equalization surcharge funds to an RPC contingent on the availability of appropriated funds. [Funds]

{(A) Within the context of Health and Safety Code section 771.056(d), the Commission shall consider any revenue insufficiencies to represent need for equalization surcharge funding support}

{(B) Consistent with this rule, the Commission shall allocate, by agreement, equalization surcharge funds and service fees to RPCs based upon the Commission's statewide strategic plan and contingent upon the availability of appropriated funds over a two year period.}

{(C) The Commission may allocate equalization surcharge to an emergency communication district (District) based on District requests and availability of appropriated funds.}

{(D) Equalization surcharge funds shall be allocated first to recipients requiring such funds for administrative budgetary purposes, followed by the Program Budget level priorities in subsection (e) of this section.}

{(E) If sufficient equalization surcharge funds are not available to fund all RPC regional plan and District requests, funds shall be allocated to provide a consistent level of 91-1 service throughout the State of Texas in accordance with the Program Budget level priorities in subsection (e) of this section. Allocation methods may include, but are not limited to, the following:}

{(i) In reverse order of priority, reducing the number of priority level components supported with equalization surcharge funds; and/or}

{(ii) In order of priority, proportionally allocating available funds among requesting agencies.}

{(F) The Commission may elect to hold a balance of equalization surcharge funds in reserve for emergencies and other contingencies.}

{(g) Funding Parameters for Ancillary Equipment. Ancillary Equipment includes the following when the equipment supports 9-1-1 call delivery: surge protection devices, emergency power equipment, voice recorders, and paging systems. An RPC shall refer to the strategic planning guidelines for instructions as to the appropriate budget line item to which the costs for purchase and maintenance of these items should be assigned.}

{(1) Paging Systems. Funding for the paging systems may be approved when such systems are the most effective means of 911 call delivery. Funding for pagers (receivers) will be limited to necessary core responders. The Commission will fund the actual cost of the pagers not to exceed \$450 per pager.}

{(2) Voice Recording Equipment. Voice loggers may be approved when the primary use of the equipment is in support of the 9-1-1 call-taking and calldelivery function. Extra capacity on such systems may be used for other public safety functions (such as dispatch).}

{(A) The Commission will normally fund voice recording capability in a PSAP to record the conversation on 9-1-1 lines and administrative or 10-digit emergency lines in order to also accommodate wireless, telematics, and Voice over IP 9-1-1 emergency calls.}

{(B) The Commission will normally fund recording capability to record the transfer of an emergency call from the PSAP first answering the call to the agency that is responsible for providing the required emergency services.}

{(C) The funding of recording devices to transfer information from another recorder will be approved only upon specific justification of need.}

{(D) The following guidelines will apply to determine the amount to be funded by the Commission:}

{(i) For a 2 position PSAP, the Commission will fund the actual cost of the recording system not to exceed \$15,000; or}

{(ii) For PSAPs with 3 positions or more, the Commission will fund the actual cost of the recording system not to exceed \$25,000.}

{(E) The Commission will consider funding of recording capabilities greater than those suggested by the guidelines when sufficient justification is provided as part of a regional plan.}

{(3) Emergency Power Equipment. Each PSAP location should be evaluated by the RPC to determine if the emergency power system needs to be updated to insure the ability to answer 9-1-1 calls in the event that commercial power is interrupted. Emergency power equipment should be evaluated and tested on a regular schedule. Other considerations include:}

{(A) An uninterrupted power source (UPS) should be considered as basic emergency power equipment. A UPS should provide continuous power to keep essential 9-1-1 system components functioning for a short period of time until generator or other emergency power equipment become operable, if necessary. A UPS primarily functions continuously to maintain a clean source of commercial power.}

{(B) Generators should be considered as auxiliary emergency power equipment and should directly support an existing (or planned) 9-1-1 system. A generator should provide continuous power to keep 9-1-1 equipment specific to the PSAP functioning.}

{(C) The following guidelines will apply to determine the amount of generator costs to be funded by the Commission:}

~~{(i) For a 2 position PSAP, the Commission will fund the actual cost of the generator not to exceed \$25,000.}~~

~~{(ii) For PSAPs with 3 positions or more, the Commission will fund the actual cost of the generator not to exceed \$40,000.}~~

~~{(4) Funding may be approved by the Commission for surge protection devices when they are used for protection of 9-1-1 specific electronic equipment. A complete evaluation of grounding at 9-1-1 PSAPs may be funded by the Commission.}~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 23, 2007.

TRD-200701514

Paul Mallett

Executive Director

Commission on State Emergency Communications

Earliest possible date of adoption: June 3, 2007

For further information, please call: (512) 305-6930



## PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

### CHAPTER 354. MEDICAID HEALTH SERVICES

#### SUBCHAPTER A. PURCHASED HEALTH SERVICES

#### DIVISION 9. AMBULANCE SERVICES

##### 1 TAC §§354.1111, 354.1113, 354.1115

The Texas Health and Human Services Commission (HHSC or Commission) proposes amendments to the following rules related to Medicaid ambulance services: §354.1111, Definitions; §354.1113, Additional Claim Information Requirements; and §354.1115, Authorized Ambulance Services.

##### Background and Justification

The proposed amendments align Medicaid rules with the statutory requirement to obtain prior authorization for non-emergency ambulance transport (Human Resources Code, §32.024(t)). Other changes to the rule include updating terminology and reorganizing the rule content.

##### Section-by-Section Summary

Changes to §354.1111, Definitions, reflect the reorganization of the Health and Human Services agencies pursuant to House Bill 2292, 78th Legislature, Regular Session, 2003. The proposal also amends the definition of "emergency medical condition" to include psychiatric disturbances, or symptoms of substance abuse and to track the definitions of "emergency medical condition" found in 42 Code of Federal Regulations 438.114(a) and 489.24(b). Other definitions are updated or removed from the rule as a result of revisions to the corresponding sections 354.1113, Additional Claim Information Requirements, and 354.1115, Authorized Ambulance Services.

Section 354.1113, Additional Claim Information Requirements, is revised to specify what must be included to document medical necessity on ambulance claims, including the requirement that transport documentation substantiate the level of service and mode of transportation. The rule also requires that a prior authorization number for nonemergency services be obtained before an ambulance is used to transport a recipient. The rule additionally clarifies the types of supporting documentation that the ambulance provider and requesting provider must maintain and make available if requested by the Office of the Inspector General or the Commission or its designee; examples of supporting documentation were deleted from this rule, and will be included instead in policy.

Section 354.1115, Authorized Ambulance Services, is amended to specifically reflect the requirements found in §32.024(t) of the Human Resources Code concerning prior authorization for non-emergency ambulance transportation. Physicians, nursing facilities, health care providers, or other responsible parties will be required to obtain authorization from the Commission or its designee before an ambulance can be used to transport a recipient in a non-emergency situation. The Commission has 48 hours to respond to the request once it is received. The rule also outlines the circumstances under which the Commission will grant immediate authorization for transport and the process an ambulance provider should follow to receive payment in cases where the requesting provider did not receive a required prior authorization.

Non-substantive terminology changes are made throughout the chapter, including replacing references to the Texas Department of Health with the Health and Human Services Commission.

##### Fiscal Note

Thomas M. Suehs, Deputy Executive Commissioner for Financial Services, has determined that during the first five years the amended rules are in effect there will be no fiscal impact to state government. The proposed rules will not result in any fiscal implications for local health and human services agencies. Local governments will not incur additional costs.

##### Small and Micro-Business Impact Analysis

Mr. Suehs has also determined that there will not be an effect on small businesses or micro businesses to comply with the proposed amendments, as they will not be required to alter their business practices as a result of the rules. There are no anticipated economic costs to persons who are required to comply with the proposed rules. There is no anticipated negative impact on local employment.

##### Public Benefit

Chris Traylor, Associate Commissioner for Medicaid and CHIP, has determined that for each of the first five years the proposed rules are in effect, the public will benefit from the adoption of the rules. The anticipated public benefit, as a result of enforcing the proposed amendments, is consistency in availability of ambulance services.

##### Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by the Government Code, §2001.0225. A "major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the

public health and safety of the state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

#### Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under the Government Code, §2007.043.

#### Public Comment

Written comments on the proposal may be submitted to Garry Walsh, Senior Policy Analyst, Medicaid/CHIP Division, Texas Health and Human Services Commission, P.O. Box 85200, Austin, TX 78708-5200, Mail Code H-390 91X; by fax to (512) 506-7808; or by e-mail to Garry.Walsh@hhsc.state.tx.us within 30 days of the publication of this proposal in the *Texas Register*.

#### Public Hearing

A public hearing is scheduled for May 24, 2007 from 9:00 a.m. to 10:00 a.m. in the HHSC Lone Star Conference Room at 11209 Metric Boulevard, Austin, Texas 78758. Persons requiring further information, special assistance, or accommodations should contact Meisha Spencer at (512) 491-1453.

#### Statutory Authority

The amendments are proposed under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021 and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

The proposed amendments affect the Human Resources Code, Chapter 32, and the Texas Government Code, Chapters 531 and 533. No other statutes, articles, or codes are affected by this proposal.

#### §354.1111. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Ambulance provider--A provider of ambulance services who:

(A) is enrolled as an ambulance provider in [with] the Texas Medicaid Program [department or its designee] to provide ambulance services for Medicaid recipients [clients];

(B) is licensed with the Department of State Health Services [Texas Department of Health], Emergency Medical Services Division;

(C) is enrolled in Medicare;

(D) agrees to accept assignment on all Medicare/Medicaid claims; and

(E) agrees to provide these services according to state and local laws, regulations, and guidelines governing ambulance services.

(2) Appropriate facility--The nearest [Medicaid-enrolled] medical facility that is equipped to provide medical care for the illness or injury of the Medicaid recipient [client] involved. It is the institution, equipment, personnel, and capability to provide the services necessary to support the required medical care [; and the distance to the facility] that determine whether a facility is appropriate.

(3) Commission--Health and Human Services Commission [~~Department--Texas Department of Health (department)~~].

(4) Designee--The [department's] contractor responsible for reimbursing Medicaid providers of [for] ambulance transport services for Medicaid recipients [clients].

(5) Emergency medical condition--A medical condition (including emergency labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain, psychiatric disturbances, or symptoms of substance abuse) such that a prudent layperson with an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention [could reasonably be expected] to result in one of the following:

(A) placing the recipient's [client's] health (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy;

(B) serious impairment to bodily functions; or

(C) serious dysfunction of any bodily organ or part.

(6) Emergency transport--Transport [Ambulance transport service] provided by a [Medicaid-enrolled] ambulance provider for a Medicaid recipient [client] whose condition meets the definition of an emergency medical condition. [Examples of conditions appropriate for emergency transports include, but are not limited to, acute and severe illnesses, untreated fractures, loss of consciousness, semiconsciousness, seizing during transport, acute or severe injuries from auto accidents, and extensive burns. Conditions requiring CPR in transit or the use of above-routine restraints for the safety of the client or crew may also be considered emergencies]. Facility-to-facility transports are [may be] appropriate as emergencies if the required [emergency] treatment for the emergency medical condition is not available at the first facility.

(7) Non-emergency transport--Transport provided by a ambulance provider for a Medicaid recipient to or from a scheduled medical appointment, to or from another licensed facility for treatment, or to the recipient's home after discharge from a hospital. Non-emergency transport is appropriate when the Medicaid recipient's medical condition is such that the use of an ambulance is the only appropriate means of transport, e.g., alternate means of transport are medically contraindicated. [Ambulance transport service, to or from a medical appointment, for a Medicaid client who requires treatment in another location and who is so severely disabled that the use of an ambulance is the only appropriate means of transfer.]

(8) Medically necessary--When the condition of the Medicaid recipient meets the definition of emergency medical condition or meets the requirements for non-emergency transport. [The condition of the Medicaid client is such that the use of any other method of transportation is contraindicated and, in the case of a client who is severely disabled, there is no other suitable transportation.]

[(9) Severely disabled--A Medicaid client whose physical condition limits his mobility and requires the client to be bed-confined at all times, unable to sit unassisted at all times, or requires continuous life-support systems (including oxygen or intravenous infusion).]

#### §354.1113. Additional Claim Information Requirements.

(a) In addition to the general requirements in §354.1001 of this title (relating to Claim Information Requirements), the following information is required on claims for ambulance services:

(1) Documentation of medical necessity in accordance with codes representing medical conditions as designated by the Commission;

(A) The transport documentation must substantiate the level of service and mode of transport provided;

(B) Reimbursement is recouped when the documentation does not substantiate that the level of service and mode of transport provided accurately matches the level of service and mode of transport claimed; and

(C) The level of service and mode of transport provided must be medically necessary based on the clinical situation and needs of the recipient;

(2) [(4)] Type [type] of ambulance service provided (e.g., air, ground, or boat);

(3) [(2)] Origin [origin] and destination of each separate trip;

(4) [(3)] Charges [charges] for ambulance services, including [both] base rates and mileage rates; and [- and written justification of the number of miles traveled; and]

[(4)] appropriate supporting documentation requested by the Texas Health and Human Services Commission or its designee to support the determination of the medical necessity and appropriateness of the ambulance transport. Examples of supporting documentation include, but are not limited to, transferring records (medical; emergency room records from transferring hospital); ambulance run sheets; time of transport; acuity of client; distance of transport; traffic patterns; and actual distance to nearest appropriate facility.]

(5) Prior authorization number (PAN).

(b) Obtaining a prior authorization number.

(1) A PAN for non-emergency transports must be obtained before an ambulance is used to transport a recipient.

(2) A PAN for out-of-state ambulance transports must be obtained before an ambulance is used to transport a recipient.

(c) Supporting documentation is required to be maintained by both the ambulance provider and the requesting provider including a physician, nursing facility, health care provider or other responsible party. Supporting documentation is to be made available if requested by the Office of Inspector General (OIG) or the Commission or its designee.

(1) An ambulance provider is required to maintain documentation that represents the recipient's medical conditions and other clinical information to substantiate medical necessity and the level of service and mode of transportation requested. This supporting documentation is limited to documents developed or maintained by the ambulance provider.

(2) Physicians, nursing facilities, health care providers or other responsible parties are required to maintain physician orders related to requests for prior authorization of non-emergency and out-of-state ambulance services. These providers must also maintain documentation of medical necessity for the ambulance transport.

#### §354.1115. Authorized Ambulance Services.

In [These requirements are in] addition to the requirements [as] stated in this section, a provider must comply with §354.1001 [§29.1] of this title (relating to Claim Information Requirements), and §354.1113 [§29.902] of this title (relating to Additional Claim Information Requirements).

(1) Emergency Ambulance Transportation. The Commission [department] or its designee will reimburse [reimburses] a Medicaid-enrolled provider for the emergency transport [transportation] of a Medicaid recipient with [whose condition conforms with the definition

of] an emergency medical condition in accordance with the following criteria [as stated in §29.901 of this title (relating to Definitions) and]:

(A) Transport [the transportation] must be to an appropriate facility [the nearest facility capable of providing the appropriate level of care for the recipient's condition]. If the transport [transportation] is made to a facility other than an appropriate facility [the nearest facility], payment is limited to the amount that would be payable to an appropriate facility [the nearest facility]; or

(B) Transport [transportation] by air or boat ambulance is reimbursable if the time and distance required to reach an appropriate facility [the nearest facility capable of providing the appropriate level of care for the recipient's condition] make the transport [transportation] by ground ambulance [unreasonable,] impractical[, or would endanger the life or safety of the recipient. If the recipient's medical condition does not meet the emergency air or boat criteria, but does meet the emergency ground transportation criteria, the payment to the provider is limited to the amount that would be payable at the emergency ground transportation rate.

(2) Non-emergency Ambulance Transportation. The Commission [department] or its designee may reimburse [reimburses] a Medicaid-enrolled ambulance provider for [the] non-emergency transport [transportation of a Medicaid recipient. under the following conditions:] when the following requirements are met:

(A) A physician, nursing facility, health care provider, or other responsible party, shall obtain authorization from the Commission or its designee before an ambulance is used to transport a recipient in circumstances not involving an emergency. [the recipient is severely disabled as defined in §29.901 of this title;]

(i) Except as provided by clause (iii) of this subparagraph, a request for authorization must be evaluated by the Commission or its designee based on the recipient's medical needs and may be granted for a length of time appropriate to the recipient's medical condition.

(ii) Except as provided by clause (iii) of this subparagraph, a response to a request for authorization must be made by the Commission or its designee not later than 48 hours after receipt of the request.

(iii) A request for authorization must be granted immediately by the Commission or its designee and must be effective for a period of 180 days from the date of issuance if the request includes a written statement from a physician that:

(I) States that alternative means of transporting the recipient are contraindicated; and

(II) Is dated not earlier than the 60th day before the date on which the request for authorization is made.

[(B) the severely disabled recipient can not be transported by any means other than an ambulance without endangering the health or safety of the recipient; and]

[(C) the nonemergency ambulance transportation of the severely disabled Medicaid recipient is to or from a scheduled medical appointment and authorization has been received from the department or its designee. ]

[(f) The prior authorization for nonemergency ambulance transportation will be based upon the following: ]

[(f) the recipient's medical needs and disability; and ]

*[(H) duration of time if regular transportation will be required as a result of the recipient's medical needs and disability. ]*

*[(ii) The prior authorization request must be approved or denied by the department or its designee not later than 48 hours after receipt of a request unless clause (iii) of this subparagraph applies.]*

*[(iii) A request for authorization must be immediately granted and must be effective for a period of 180 days from the date of issuance if the request includes a written statement from a physician that:]*

*[(I) states that alternative means of transporting the recipient are contraindicated;]*

*[(H) is dated not earlier than the 60th day before the date on which the request for authorization is made; and ]*

*[(HH) is submitted on the Texas Department of Health approved Physician Certification Form.]*

(B) A person denied payment for ambulance services rendered is entitled to payment from the nursing facility, healthcare provider, or other responsible party that requested the services if:

(i) Payment under the Medicaid program is denied because of lack of prior authorization; and

(ii) The person provides the nursing facility, healthcare provider, or other responsible party with a copy of the bill for which payment was denied.

(3) Hearings. For information about recipient fair hearings, refer to the Commission's fair hearing rules, Chapter 357 of this title (relating to Hearings). [Recipient Fair Hearing. A denial, delay, reduction, or modification of ambulance transportation services may be appealed by the recipient under the department's fair hearing rules as stated in Chapter 36 of this title (relating to Medicaid Program Appeals Procedures).]

(4) Provider Appeal. An ambulance provider denied payment for services rendered because of failure to obtain prior authorization, or because a request for prior authorization was denied, is entitled to appeal the denial of payment to the Commission or its designee. A denial of a [transportation] claim may be appealed by a provider under the Commission's [department's] appeals procedures contained in the Texas Medicaid Provider Procedures Manual and §354.1003 of this title (relating to Time Limits for Submitted Claims).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 20, 2007.

TRD-200701511

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: June 3, 2007

For further information, please call: (512) 424-6900



## CHAPTER 355. REIMBURSEMENT RATES

### SUBCHAPTER J. PURCHASED HEALTH SERVICES

## DIVISION 3. PHYSICIAN SERVICES

### 1 TAC §355.8043

The Health and Human Services Commission (HHSC) proposes to add new §355.8043 to Chapter 355 of Title 1 of the Texas Administrative Code. Section 355.8043 establishes the methodology HHSC will use to distribute supplemental Medicaid Upper Payment Limit (UPL) payments to certain physicians.

#### Background and Purpose

HHSC requested approval from the Centers for Medicare and Medicaid Services (CMS) to implement a supplemental payment program to state-affiliated physician group practices through the submission of a State Plan Amendment (SPA) on June 30, 2004. The change in reimbursement practice recognizes the unique role state-affiliated physician group practices play in providing services to Medicaid recipients. As a result of this change in methodology, the State will obtain additional federal revenue for state-owned medical schools that bill Medicaid. The state matching funds required to draw down federal dollars will be provided by the state-owned medical schools. The effective date of this SPA is May 1, 2004.

#### Fiscal Note

Thomas M. Suehs, Deputy Executive Commissioner for Financial Services, has determined that the proposed new rule is not expected to increase state expenditures, but will increase the amount of federal matching funds to the State. During State Fiscal Year 2007, HHSC estimates that the proposed new rule will result in increased federal matching funds of \$231,923,879; this figure includes retroactive payments for state Fiscal Years 2004 - 2006. HHSC estimates that the state will receive an estimated increase in federal matching funds of \$68,000,000, per fiscal year, in subsequent years.

#### Small Business and Micro-business Impact Analysis

HHSC has determined that there is no adverse economic effect on small businesses or micro-businesses, or on businesses of any size, as a result of enforcing or administering the proposed new rule.

#### Cost to Persons and Effect on Local Economies

HHSC does not anticipate that there will be any economic cost to persons who are required to comply with this proposed new rule. The new rule will not affect a local economy.

#### Public Benefit

Mr. Suehs, Deputy Executive Commissioner for Financial Services, determined that, for the first five years the rule is in effect, the public benefit expected as a result of enforcing the proposed new rule is that state-owned physician group practices in the State of Texas will recover more of their cost of treating Medicaid patients.

#### Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "major environmental rule" is defined to mean a rule, the specific intent of which is, to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of a state or a sector of the state. This

proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

#### Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

#### Public Comment

Questions about the content of this proposal may be directed to Lupita Villarreal (512) 491-1178 in HHSC Rate Analysis-Hospital Services. Written comments on the proposal may be submitted to Mrs. Villarreal by facsimile (512) 491-1998; e-mail to [Lupita.Villarreal@hhsc.state.tx.us](mailto:Lupita.Villarreal@hhsc.state.tx.us); or by mail to HHSC Rate Analysis-Hospital Services, Mail Code H-400, P.O. Box 85200, Austin, TX 78708-5200, within 30 days of publication in the *Texas Register*.

#### Statutory Authority

The new rule is proposed under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and the Texas Government Code, §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

The proposed new rule affects Chapter 531 of the Texas Government Code and Chapter 32 of the Human Resources Code. No other statutes, articles, or codes are affected by this proposal.

#### §355.8043. Supplemental Payments to Certain Physicians.

##### Supplemental payments to certain physicians.

(1) Notwithstanding other provisions of this section, supplemental payments are available under this paragraph to physicians who are recognized as essential to the Texas State Medicaid program. To be identified as an essential physician and qualify for a supplemental payment, the physician must be:

- (A) A Texas licensed physician;
- (B) Enrolled as a Texas Medicaid provider; and

(C) Employed by an eligible physician group practice that is state-owned or operated. Employees under contract with a physician group practice are not included in supplemental payment calculations nor are they eligible for this supplemental payment. Eligible physician group practices consist of those affiliated with:

- (i) UT--Southwestern--Effective: 5/1/2004
- (ii) UT--San Antonio--Effective: 5/1/2004
- (iii) UT--Tyler--Effective: 5/1/2004
- (iv) UT--Houston--Effective: 5/1/2004
- (v) UTMB--Effective: 5/1/2004
- (vi) MD Anderson--Effective: 5/1/2004
- (vii) University of North Texas--Effective: 5/1/2004
- (viii) Texas Tech--Amarillo--Effective: 5/1/2004
- (ix) Texas Tech--El Paso--Effective: 5/1/2004
- (x) Texas Tech--Lubbock--Effective: 5/1/2004

(xi) Texas Tech--Odessa--Effective: 5/1/2004

(2) For services rendered by physicians employed by the practices at paragraph (1) of this section, a supplemental payment will be made that is equal to the difference between the Medicaid payments otherwise made and payments at the Medicare Equivalent (specifically the Medicare non facility rate equivalent) of the Average Commercial Rate Payment. This supplemental payment will, for the same dates of service, be reduced by any other supplemental payment found elsewhere in the state plan. Payment will be made quarterly and will not be made prior to the delivery of services.

(3) The Base Period Medicare Equivalent of the Average Commercial Rate to be paid to practitioners affiliated with physician group practices eligible under paragraph (1)(C) of this section, will be determined as follows. The following calculation will be performed separately for each of the practices that employ eligible practitioners. Supplemental payment to each practice will be based on this per practice calculation:

(A) Compute Average Commercial Fee Schedule: For the base period, compute the average commercial allowed amount per Current Procedural Terminology (CPT) Code, including patient share amounts, for the top five payers for procedure codes with payment rates. The top five commercial third-party payers will be determined by total billed charges reported by practice plans as defined in paragraph (1)(C) of this section.

(B) Calculate the Base Period Average Commercial Payment Ceiling: Multiply the Average Commercial Fee Schedule, as determined in paragraph (3)(A) of this section, by the number of times each procedure code was rendered in the base period and paid to eligible plans on behalf of Medicaid beneficiaries, as reported from the Medicaid Management Information System (MMIS). The sum of the product for all procedure codes shall determine the Base Period Average Commercial Payment Ceiling.

(C) Determine the Base Period Medicare Payment Ceiling: For each of the procedure codes used to determine the Average Commercial Payment Ceiling in paragraph (3)(B) of this section, multiply the base period, non-facility Medicare allowed rate from the April release Relative Base Relative Value System (RBRVS) by the number of times each procedure code was rendered in the base period and paid to eligible plans on behalf of Medicaid beneficiaries as reported from the MMIS. The sum of the product for all procedure codes will represent the Base Period Medicare-equivalent Payment Ceiling.

(D) Determine the Base Period Medicare Equivalent of the Average Commercial Rate: Divide the Base Period Average Commercial Payment Ceiling computed in paragraph (3)(B) by the Base Period Medicare Payment Ceiling determined in paragraph (3)(C) of this section.

(E) Periodic Updates to the Base Period Medicare Equivalent of the Average Commercial Rate: The State will update this ratio at least every three years.

#### (4) Determination of Supplemental Payment.

(A) The supplemental payment ceiling for each physician practice eligible under paragraph (1)(C) of this section, will be determined as follows: The Medicare Equivalent of the Average Commercial Rate is multiplied by the Medicare payment at the non-facility rate per CPT Code, then multiplied by the Medicaid volume by CPT Code for the same period, as reported through the MMIS.

(i) (Medicare Equivalent of the Average Commercial Rate) X (Medicare Payment per CPT Code) X (Medicaid Volume per CPT Code) = Payment Ceiling.

(ii) Medicare payment at the non-facility rate and Medicaid volume for those services are derived from the same period of time.

(B) Determine the Medicaid Supplemental Payment Ceiling: The Medicaid Supplemental Payment for each plan, as described in paragraph (1)(C) of this section, will equal the current period payment ceiling at the Medicare Equivalent of the Average Commercial Rate less all Medicaid payments, including enhanced payments, for procedure codes rendered in the current period and paid to eligible physician group practices on behalf of Medicaid beneficiaries as reported from the MMIS. Medicaid volume and payments will include all available payments and adjustments.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 20, 2007.

TRD-200701512

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: June 3, 2007

For further information, please call: (512) 424-6900



## DIVISION 23. EARLY AND PERIODIC SCREENING, DIAGNOSIS AND TREATMENT (EPSDT)

### 1 TAC §355.8441

The Texas Health and Human Services Commission (HHSC) proposes to amend Title 1 of the Texas Administrative Code (TAC), §355.8441, by adding paragraph (12) covering the reimbursement methodology for personal care services delivered to Medicaid-eligible clients under age 21.

#### Background and Justification

*Alberto N. v. Hawkins* was filed in 1999, in the U.S. District Court for the Eastern District of Texas. Plaintiffs were children who alleged they had been denied access to certain medically necessary in-home Medicaid service, including personal care services (PCS). To meet plaintiffs' needs, and the needs of those similarly situated, HHSC is establishing a personal care services benefit designed especially for THSteps beneficiaries. Currently personal care services for THSteps-eligible beneficiaries are available through the Primary Home Care program operated by the Department of Aging and Disability Services. The proposed new PCS benefit is expected to be operational by September 1, 2007. The personal care services benefit will be available to any THSteps-eligible beneficiary who requires assistance with activities of daily living, instrumental activities of daily living, and health-related functions due to a physical, cognitive, or behavioral limitation related to his or her disability or chronic health condition, regardless of diagnosis, type of illness, or condition. This proposed reimbursement methodology rule accompanies new personal care services program rules at 1 TAC §§363.601, 363.603, 363.605, and 363.607, which were previously proposed in the April 16, 2007, issue of the *Texas Register*. In conjunction with this rule, HHSC is proposing new §355.8443 of this title (relating to Reimbursement Methodology

for School Health and Related Services (SHARS)) to be published in the May 11, 2007, issue of the *Texas Register*.

#### Section-by-Section Summary

Proposed §355.8441(12)(A) provides that the reimbursement methodology for personal care services delivered by school districts is located at §355.8443, relating to the Reimbursement Methodology for School Health and Related Services (SHARS).

Proposed §355.8441(12)(B) describes the reimbursement methodology for personal care services delivered by providers other than school districts as fees determined by HHSC or its designee using at least one of the following methods: a review of rates paid to providers delivering similar services; modeling using an analysis of other data available to HHSC; or a combination of the two. Personal care services delivered under the Consumer Directed Services (CDS) payment option will be reimbursed in accordance with §355.114, relating to the Consumer Directed Services Payment Option.

#### Fiscal Note

Thomas M. Suehs, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the proposed rules are in effect there will be a fiscal impact to state government of \$53.6 million for state fiscal year (SFY) 2008, \$55.6 million for SFY 2009, \$57.0 million for SFY 2010, \$58.3 million for SFY 2011, and \$59.7 million for SFY 2012. The proposed rules will not result in any fiscal implications for local health and human services agencies. Local governments will not incur additional costs.

#### Small and Micro-business Impact Analysis

Mr. Suehs has also determined that there will be no effect on small businesses or micro businesses to comply with the proposal, as they will not be required to alter their business practices as a result of the rule. There are no anticipated economic costs to persons who are required to comply with the proposed rule. There is no anticipated negative impact on local employment.

#### Public Benefit

Carolyn Pratt, Director of Rate Analysis, has determined that for each year of the first five years the proposed rules are in effect, the public will benefit from the adoption of the amendment. The anticipated public benefit, as a result of enforcing the amendment, will be to provide additional personal care services to the Medicaid population under 21 years of age.

#### Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

#### Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code.



## Public Comment

Written comments on the proposal may be submitted to Nancy Kimble, Senior Rate Analyst in the Rate Analysis Division, Texas Health and Human Services Commission, P.O. Box 85200, MC-H400, Austin, Texas 78708-5200; by fax (512) 491-1983 or by e-mail at Nancy.Kimble@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

## Statutory Authority

The amendment is proposed under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and the Texas Government Code, §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

The proposed amendment affects the Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

*§355.8441. Reimbursement Methodologies for Early and Periodic Screening, Diagnosis and Treatment[~~-Comprehensive Care Program~~] (EPSDT[~~-CCP~~]) Services.*

The following are reimbursement methodologies for services provided under the Early and Periodic Screening, Diagnosis and Treatment[~~-Comprehensive Care Program~~] (EPSDT[~~-CCP~~]) program, delivered only to Medicaid clients under age 21, also known as the Texas Health Steps [CCP] (THSteps[~~-CCP~~)]; only to client under age 24. Reimbursement methodologies for services provided to all Medicaid clients, including clients under age 21, are located elsewhere in this chapter.

(1) THSteps[~~-CCP~~] counseling and psychotherapy services are reimbursed to freestanding psychiatric hospitals and facilities in accordance with §355.8063 of this title (relating to Reimbursement Methodology for Inpatient Hospital Services). The reimbursement methodologies for counseling and psychotherapy services provided to all Medicaid clients are located elsewhere in this chapter.

(2) - (11) (No change.)

(12) Personal care services (PCS) are reimbursed in accordance with the following Medicaid reimbursement methodologies for the applicable provider type:

(A) School districts delivering PCS under School Health and Related Services (SHARS) are reimbursed in accordance with §355.8443 of this title (relating to Reimbursement Methodology for School Health and Related Services (SHARS)); and

(B) Providers other than school districts delivering PCS are reimbursed as follows:

(i) PCS and PCS delivered in conjunction with delegated nursing services are reimbursed fees determined by HHSC or its designee. The fees are determined using at least one of the following methods: a review of rates paid to providers delivering similar services; modeling using an analysis of other data available to HHSC; or a combination thereof, as determined appropriate by HHSC.

(ii) PCS delivered through the Consumer Directed Services (CDS) payment option are reimbursed in accordance with §355.114 of this title (relating to Consumer Directed Services Payment Option).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 20, 2007.

TRD-200701513

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: June 3, 2007

For further information, please call: (512) 424-6900

## TITLE 7. BANKING AND SECURITIES

### PART 1. FINANCE COMMISSION OF TEXAS

#### CHAPTER 3. STATE BANK REGULATION SUBCHAPTER B. GENERAL

##### 7 TAC §3.37

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes to amend §3.37, concerning the calculation of annual assessment for banks.

Section 3.37 specifies the assessment rates governing the calculation and payment of fees that the Texas Department of Banking (department) is authorized to recover for maintaining and operating the department and enforcing applicable provisions of the Finance Code. The proposed amendment to §3.37 does not change the assessment rates applicable to state banks but creates an additional category of discounted fees applicable to certain well-managed and well-capitalized banks that now qualify for an extended examination schedule.

Until recently, both state and federal law permitted a well-managed and well-capitalized bank with total assets less than \$250 million to be examined under an extended 18 month examination cycle, subject to supervisory discretion to conduct an examination more frequently if warranted. The recently enacted Financial Services Regulatory Relief Act of 2006 increased the total asset threshold to \$500 million from \$250 million for federal examination purposes, effectively allowing more banks to qualify for the extended 18 month examination cycle under federal law.

The department does not have safety and soundness concerns with this federal change in examination frequency for a bank with total assets less than \$500 million, and has taken steps to similarly change the state examination cycle to enable continued, coordinated examinations with federal agencies.

The strategy underlying bank assessments in §3.37 is risk-based. Well-managed and well-capitalized banks with total assets of less than \$250 million that qualify for the 18-month examination cycle currently receive a discount on assessments. A well-managed and well-capitalized bank with total assets of \$250-\$500 million that now qualifies for the 18-month examination cycle should also receive a discount on assessments. The proposed amendment to the table in Figure: 7 TAC §3.37 will reduce the assessment rate multiplier for these banks from 100% to 87.5%.

Robert L. Bacon, Deputy Commissioner, Texas Department of Banking, has determined that, for each year of the first five years that the section is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the section. Although department revenue attributable to the banks affected by the proposed amendment will decline, total department revenue will remain stable and sufficient to fully fund the department's expenses because of reduced expenses attributable to the affected banks and additional revenue attributable to new banks periodically added to the department's jurisdiction.

Mr. Bacon has also determined that, for each of the first five years the section as amended is in effect, the public benefit anticipated as a result of the proposed amendment is reduced regulatory burden in the form of reduced assessment fees for certain state banks with total assets of \$250-\$500 million that will be eligible for an 18-month instead of a 12-month examination frequency cycle. For each year of such first five years, there will be no economic costs to persons required to comply with the proposed amendment. Finally, Mr. Bacon has determined that the proposed amendment will not have an adverse effect upon small businesses or micro-businesses.

To be considered, comments on the proposed amendment must be submitted not later than 30 days after the date of publication of this notice. Comments should be addressed to Everette D. Jobe, Senior Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to [ejobe@banking.state.tx.us](mailto:ejobe@banking.state.tx.us).

The amendment is proposed pursuant to Finance Code, §§11.301, 31.003(a)(4), and 31.106, which authorize the commission to adopt rules necessary or reasonable to recover the cost of supervision and regulation by imposing and collecting ratable and equitable fees.

Finance Code, §31.106, is affected by the proposed amendments.

#### *§3.37. Calculation of Annual Assessment for Banks.*

The annual assessment for a state bank is calculated as described in §3.36 of this title (relating to Annual Assessments and Specialty Examination Fees), based on the values in the following table:

Figure: 7 TAC §3.37

[Figure: 7 TAC §3.37]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 20, 2007.

TRD-200701502

Sarah J. Shirley

General Counsel

Finance Commission of Texas

Proposed date of adoption: June 15, 2007

For further information, please call: (512) 475-1300



## PART 2. TEXAS DEPARTMENT OF BANKING

### CHAPTER 15. CORPORATE ACTIVITIES SUBCHAPTER C. BANK OFFICES

#### **7 TAC §15.43**

The Finance Commission of Texas (commission) proposes new §15.43, concerning establishment and operation of a remote service unit. Proposed §15.43 would codify Texas Department of Banking Opinion No. 07-01, issued February 20, 2007, concluding that a remote service unit is not a "branch" under Texas law.

Proposed §15.43 defines a remote service unit as an automated facility, operated by a customer of a bank, that conducts banking functions such as receiving deposits, paying withdrawals, or lending money. The term includes an unmanned or automated teller machine, automated loan machine, and automated device for receiving deposits, and the device may be equipped with a telephone or video device that allows contact with bank personnel. The proposed section would exclude a remote service unit from the definition of "branch" in Finance Code, §31.002(a)(8).

Robert L. Bacon, Deputy Commissioner, Texas Department of Banking, has determined that for the first five year period the section is in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the section.

Mr. Bacon has also determined that, for each of the first five years the section as proposed will be in effect, the anticipated public benefit will be increased banking convenience for businesses in this state and reduced regulatory burden for state banks. No economic costs will be incurred by a person required to comply with this section. There will be no adverse economic effect on small businesses.

To be considered, comments on the proposed rule must be submitted not later than 30 days after the date of publication of this notice. Comments should be addressed to Everette Jobe, Senior Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705-4294, or by email to [ejobe@banking.state.tx.us](mailto:ejobe@banking.state.tx.us).

The new section is proposed under Finance Code, §31.003(a), which authorizes the commission to adopt rules to accomplish the purposes of Finance Code, Title 3, Subtitle A, and Finance Code, §31.002(a)(8)(H), which authorizes the commission to adopt rules exempting a banking facility from the definition of "branch." As required by §31.003(b), in proposing the section the finance commission considered the need to promote a stable banking environment, provide the public with convenient, safe, and competitive banking services, preserve and promote the competitive position of state banks with regard to national banks and other depository institutions in this state consistent with the safety and soundness of state banks and the state bank system, and allow for economic development in this state.

Finance Code, Chapter 32, is affected by the proposed section.

#### §15.43. Establishment and Operation of a Remote Service Unit.

(a) "Remote service unit" means an automated facility, operated by a customer of a bank, that conducts banking functions such as receiving deposits, paying withdrawals, or lending money, and includes an unmanned or automated teller machine, an automated loan machine, and an automated device for receiving deposits. A remote service unit may be equipped with a telephone or video device that allows contact with bank personnel.

(b) A remote service unit is not a branch within the meaning of Finance Code, §31.002(a)(8). A remote service unit established, operated, and maintained by a state bank is not subject to licensing, registration, or prior regulatory approval.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 20, 2007.

TRD-200701503

Sarah J. Shirley

General Counsel

Texas Department of Banking

Proposed date of adoption: June 15, 2007

For further information, please call: (512) 475-1300



## TITLE 13. CULTURAL RESOURCES

### PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

#### CHAPTER 6. STATE RECORDS

##### SUBCHAPTER A. RECORDS RETENTION SCHEDULING

###### 13 TAC §6.10

*(Editor's Note: In accordance with Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 13 TAC §6.10 is not included in the print version of the Texas Register. The figure is available in the on-line edition of the May 4, 2007, issue of the Texas Register.)*

The Texas State Library and Archives Commission proposes amendments to 13 TAC §6.10, relating to the Texas State Records Retention Schedule. The purpose of the amendment is to make needed, clarifying changes to the schedule. The wording of a cautionary note in the 3rd edition of the schedule could allow a state agency to proceed with the destruction of a record whose retention period has expired, but that has not yet been destroyed, even though pending litigation, a public information request, an audit, or a related action involving the record has commenced prior to its destruction; the proposed 4th edition corrects the error. The proposed edition further defines the meaning of "after completed" with regard to several of the records series listed and eliminates a record series (Telephone Message Notifications) by including it in the more appropriate category of Transitory Information. The proposed edition also corrects errors in grammar, punctuation, page references, and other errors of a non-substantive nature in the 3rd edition.

Michael Heskett, State Records Administrator and Director of the State and Local Records Management Division, has determined that for each year of the first five years the proposed amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended section.

Mr. Heskett has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amended section will be that state records involved with pending litigation, public information requests, audits, or similar actions are not destroyed inappropriately. Other changes proposed clarify ambiguities that will be helpful to state agencies in the preparation and submission of

records retention schedules as required by state law. There will be no effect on small businesses or individuals.

Written comments on the proposed amendment may be sent to Michael Heskett, State and Local Records Management Division, Texas State Library and Archives Commission, P.O. Box 12927, Austin, Texas 78711 or electronically to michael.heskett@tsl.state.tx.us, or faxed to (512) 421-7201.

The amendment is proposed under Texas Government Code, §441.186(f) that permits the commission to adopt minimum retention periods for state records and under Texas Government Code, §441.199 that gives the commission authority to adopt rules affecting the state's management and preservation of records.

The proposed amendment implements the requirements of Texas Government Code, §441.186(f) and §441.199.

§6.10. *Texas State Records Retention Schedule.*

A record listed in the Texas State Records Retention Schedule (4th [Third] Edition) must be retained for the minimum retention period indicated by any state agency that maintains a record of the type described.

Figure: 13 TAC §6.10

[Figure: 13 TAC §6.10]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 20, 2007.

TRD-200701500

Edward Seidenberg

Assistant State Librarian

Texas State Library and Archives Commission

Earliest possible date of adoption: June 3, 2007

For further information, please call: (512) 463-5459



## TITLE 22. EXAMINING BOARDS

### PART 9. TEXAS MEDICAL BOARD

#### CHAPTER 161. GENERAL PROVISIONS

##### 22 TAC §161.3

The Texas Medical Board proposes an amendment to §161.3, concerning Organization and Structure.

The amendment sets out standards of conduct for board members.

Robert D. Simpson, General Counsel, Texas Medical Board, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications to state or local government as a result of enforcing the section as proposed. There will be no effect to individuals required to comply with the section as proposed.

Mr. Simpson also has determined that for each year of the first five years the amendment as proposed is in effect the public benefit anticipated as a result of enforcing the section will be to notify the public of standards of conduct expected of board members. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Sally Durocher, P.O. Box 2018, Austin, Texas 78768-2018. A public hearing will be held at a later date.

The amendment is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

Section 152.006, Texas Occupations Code Annotated is affected by the proposed amendment.

*§161.3. Organization and Structure.*

(a) - (d) (No change.)

(e) A board member should strive to achieve and project the highest standards of professional conduct. Such standards include:

(1) A board member should not accept or solicit any benefit that might influence the board member in the discharge of official duties or that the board member knows or should know is being offered with the intent to influence official conduct.

(2) A board member should not accept employment or engage in any business or professional activity that would involve the disclosure of confidential information acquired by reason of the official position as a board member.

(3) A board member should not accept employment that could impair independence of judgment in the performance of the board member's official duties.

(4) A board member should not make personal investments that could reasonably be expected to create a conflict between the board member's private interest and the public interest.

(5) A board member should not intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised the board member's official powers or performed the board member's official duties in favor of another.

(6) A board member should be fair and impartial in the conduct of the business of the board. A board member should project such fairness and impartiality in any meeting or hearing.

(7) A board member should be diligent in preparing for meetings and hearings.

(8) A board member should avoid conflicts of interests. If a conflict of interest should unintentionally occur, the board member should recuse himself or herself from participating in any matter before the board that could be affected by the conflict.

(9) A board member should avoid the use their official position to imply professional superiority or competence.

(10) A board member should avoid the use of their official position as an endorsement in any health care related matter. Because an expert witness, by necessity, must disclose the witness's resume, which will include membership on the board, and because any health care related lawsuit could become the subject of a board investigation, a board member should not appear as an expert witness in any case, except with prior approval of the Executive Committee of the board.

(11) A board member should refrain from making any statement that implies that the board member is speaking for the board if the board has not voted on an issue or unless the board has given the board member such authority.

(f) [(e)] One ground for removal from the board occurs if a board member is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the board. If the executive director of the board has knowledge that a potential ground for removal exists due to a member's failure to attend an adequate number of regularly scheduled board meetings, the executive director shall notify the president of the board of the ground. The president of the board shall then notify the governor's office that a potential ground for removal exists. A board member shall be considered to have been absent from a regularly scheduled board meeting if the member fails to attend at least a portion of either a full board session or a portion of a regularly scheduled committee meeting to which a member is assigned during such board meeting. Any dispute or controversy as to whether or not an absence has occurred shall be submitted to the full board for resolution by a majority vote after giving the purported absentee the opportunity to present information concerning the alleged absences and after allowing discussion by other members of the board.

(g) [(f)] Each member of the board shall receive per diem as provided by law for each day that the member engages in the business of the board and will be reimbursed for travel expenses incurred in accordance with the state of Texas and board's travel policies.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 23, 2007.

TRD-200701515

Donald W. Patrick, MD, JD

Executive Director

Texas Medical Board

Earliest possible date of adoption: June 3, 2007

For further information, please call: (512) 305-7016



## CHAPTER 163. LICENSURE

### 22 TAC §§163.1, 163.2, 163.4, 163.6 - 163.9

The Texas Medical Board proposes amendments to §§163.1, 163.2, 163.4, 163.6 and new §§163.7 - 163.9, concerning Licensure.

The amendment to §163.1 recognizes the authority of the Texas Higher Education Coordinating Board to determine whether a degree conferred by a medical school located outside the United States or Canada is the equivalent of an accredited or authorized degree and to identify fraudulent and substandard medical schools. The amendment also provides that a fraudulent or substandard school may not be an acceptable unapproved medical school for purposes of licensure by the board. The amendment sets forth the curriculum definitions for course areas prescribed by the Texas Higher Education Coordinating Board for determining eligibility of international medical graduates for Texas medical licensure.

The amendment to §163.2 specifies that a graduate of a school located outside the United States or Canada, that has been disapproved by another state or identified as fraudulent or substandard by the Texas Higher Education Coordinating Board must show that the school meets the board's requirements for substantial equivalency as part of alternative licensure requirements.

The amendment to §163.4 authorizes the Licensure Committee of the board to consider an appeal of an Executive Director's determination of ineligibility for licensure without requiring further investigation of an application and to reopen the investigation if the Licensure Committee determines that the basis for ineligibility is not well founded.

The amendment to §163.6 deletes provisions regarding the "ten-year rule" so that those provisions can be included in a new §163.7 and provides that the JP Exam must only be taken once.

Proposed new §163.7 moves "ten-year rule," which was previously contained in §163.6(e), to this new section.

Proposed new §163.8 sets forth requirements of a medical school institution or degree program that will authorize its graduates to take the United States Medical Licensing Examination ("USMLE"), Jurisprudence Examination, or other professional licensing examination required for licensure by the board, thereby exempting the board and applicants for medical licensure from the provisions of Chapter 61, Subchapter G, Education Code, pursuant to §61.303, Education Code.

Proposed new §163.9 provides that any license or permit issued by the board terminates any previously issued license or permit, so that only one license or permit is held by a licensee at any time.

Robert D. Simpson, General Counsel, Texas Medical Board, has determined that for the first five-year period the rules are in effect there will be no fiscal implications to state or local government as a result of enforcing the section as proposed. There will be no effect to individuals required to comply with the sections as proposed.

Mr. Simpson also has determined that for each year of the first five years the rules as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be to provide a policy that fraudulent or substandard medical schools will not be considered to be acceptable unapproved medical schools for purposes of licensure by the board; to recognize the statutory requirement that any graduate of a medical school located outside the United States or Canada must meet the board's requirements for substantial equivalency to a Texas medical school; to provide efficiency in the Licensure Division of the board by eliminating the necessity for further investigation upon a determination of ineligibility; to make the "ten-year rule" more prominent by putting it in a separate section and to promote efficiency by eliminating redundant taking of JP Exam; to make the "ten-year rule" more prominent so that applicants will more easily understand requirements of licensure; to specify the basis for authorization for graduates of medical schools to take professional licensing examinations required for licensure by the board and assures that the board and its employees and applicants will not be subject to criminal or administrative penalties because of identification of a medical school as fraudulent or substandard by the Texas Higher Education Coordinating Board if the medical school meets the requirements of the board for substantial equivalence to a Texas medical school and to reduce the potential confusion that would occur if license holders could hold more than one license from the board. There will be no effect on small or micro businesses. The amendment to §163.1 may affect small businesses that operate medical schools outside the United States or Canada adversely, if the Texas Higher Education Coordinating Board has identified a school as fraudulent or substandard.

Comments on the proposal may be submitted to Sally Durocher, P.O. Box 2018, Austin, Texas 78768-2018. A public hearing will be held at a later date.

The amendment and new sections are proposed under the authority of the Texas Occupations Code Annotated, §153.001 and §155.003(d), which provides authority for the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

Section 61.303 and §61.3021, Texas Education Code and §§153.001, 155.003(d), 155.0031(d), 155.054(b), Texas Occupations Code Annotated are affected by the proposed rules.

#### *§163.1. Definitions.*

The following words and terms, (concerning General Definitions) when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) (No change.)

(2) Acceptable unapproved medical school--A school or college located outside the United States or Canada that:

(A) is substantially equivalent to a Texas medical school; and

(B) has not been disapproved by a state physician licensing or education agency ~~[another state physician licensing agency unless the applicant can provide evidence that the disapproval was unfounded]~~.

(i) If another state's physician licensing agency or education agency has determined that a medical degree conferred by a medical school is not the equivalent of an accredited or authorized degree or has otherwise disapproved the medical school, the board will not recognize the medical school as an acceptable unapproved medical school, unless:

(I) the Texas Higher Education Coordinating Board has determined that a degree conferred by the medical school is the equivalent of an accredited or authorized degree through the review process described by §61.3021, Texas Education Code; or

(II) the applicant can provide evidence that the determination or disapproval by the other state was unfounded.

(ii) A fraudulent or substandard medical school operating outside the United States or Canada shall not be an acceptable unapproved medical school. "Fraudulent or substandard," as used in this subsection, has the meaning assigned by §61.302, Texas Education Code. If the Texas Higher Education Coordinating Board certifies that it has determined, through the review process described by §61.3021, Texas Education Code, that a medical degree conferred by a medical school is not the equivalent of an accredited or authorized degree, the board will not recognize the medical school as an acceptable unapproved medical school.

(iii) This subsection shall not affect any person who received a license from the board prior to a determination by the Texas Higher Education Coordinating Board through the review process described by §31.3021, Texas Education Code.

(3) - (11) (No change.)

(12) Substantially equivalent to a Texas medical school--A medical school or college shall be considered to be substantially equivalent to a Texas medical school under the following conditions:

(A) An acceptable approved medical school shall be considered to be substantially equivalent to a Texas medical school. A medical school operating within the United States or Canada that is not an acceptable approved medical school shall not be considered to be substantially equivalent to a Texas medical school.

(B) A medical school operating outside the United States or Canada may be determined to be substantially equivalent to a Texas medical school if the medical school is [that is an institution of higher learning] designed to select and educate medical students and [;] provide students with the opportunity to acquire a sound basic medical education through training in basic sciences and clinical sciences. The school should provide information about the school's program of advancement of knowledge through research; the school's development of programs of graduate medical education to produce practitioners, teachers, and researchers; and, the school's program to provide opportunity for postgraduate and continuing medical education, for the board's consideration. In addition, to be determined substantially equivalent to a Texas medical school, the medical school's characteristics shall include, but not be limited to, the following:

(i) [(A)] The facilities for basic sciences and clinical training (i.e., laboratories, hospitals, library, etc.) shall be adequate to ensure opportunity for proper education.

(ii) [(B)] The admissions standards shall ensure that the medical school has a pool of applicants sufficiently large and possessing United States national level qualifications to fill its entering class. Medical schools must select students who possess the intelligence, integrity, and personal and emotional characteristics necessary for them to become effective physicians.

(iii) The curriculum shall meet the requirements for an unapproved medical school as set forth in the "Curriculum Definitions for Course Areas Prescribed by the Texas Higher Education Coordinating Board for Determining Eligibility of International Medical Graduates for Texas Medical Licensure," as adopted by the Texas Higher Education Coordinating Board, as follows:

(I) [(C)] The basic sciences curriculum shall include the contemporary content of those expanded disciplines that have been traditionally titled gross anatomy, biochemistry, biology, physiology, microbiology, immunology, pathology, pharmacology, and neuroscience[; as defined by the Texas Higher Education Coordinating Board, the Liaison Council on Medical Education, and/or the American Osteopathic Association Bureau of Professional Education].

(II) [(D)] The fundamental clinical subjects, which shall be offered in the form of required patient-related clerkships, are internal medicine, obstetrics and gynecology, pediatrics, psychiatry, family practice, and surgery [; as defined by the Texas Higher Education Coordinating Board, the Liaison Council on Medical Education, and/or American Osteopathic Association Bureau of Professional Education].

(iv) [(E)] The curriculum shall be of at least 130 weeks in duration.

(v) [(F)] There must be integrated institutional responsibility for the overall design, management and evaluation of a coherent and coordinated curriculum.

(vi) [(G)] For schools that have geographically separated programs, the principal academic officer of each geographically remote site must coordinate the curriculum with an academic officer of the medical school responsible for organizing the educational program.

(13) - (14) (No change.)

#### *§163.2. Full Texas Medical License.*

(a) (No change.)

(b) Graduates of medical schools outside the United States or Canada. To be eligible for full licensure, an applicant who is a graduate from a school outside the United States or Canada must:

(1) - (3) (No change.)

(4) be a graduate of:

(A) an acceptable unapproved medical school as defined under §163.1(2) of this title; or

(B) a [any] medical school that meets the board's requirements for substantial equivalence to a Texas medical school and:

(i) - (ii) (No change.)

(iii) have, on a full-time basis, actively diagnosed or treated patients [persons] or have been on the active teaching faculty of an acceptable approved medical school for three of the last four years preceding receipt of an Application for licensure, which may include post-graduate training (The term "full-time basis" shall have the same meaning provided in §163.11(b) of this title); and

(iv) (No change.)

(5) - (11) (No change.)

(c) (No change.)

#### *§163.4. Procedural Rules for Licensure Applicants.*

(a) - (e) (No change.)

(f) If the Executive Director determines that the applicant is ineligible for licensure for one or more reasons, the applicant may appeal that decision to the Licensure Committee before completing other licensure requirements for a determination by the Committee solely regarding issues raised by the determination of ineligibility. If the Committee overrules the determination of the Executive Director, the applicant may then provide additional information to complete the application, which must be analyzed by board staff and approved before a license may be issued.

#### *§163.6. Examinations Accepted for Licensure.*

(a) - (d) (No change.)

[(e) An applicant who has not passed an examination listed in subsection (a) for licensure within the ten-year period prior to the filing date of the application must:]

[(1) pass a monitored specialty certification examination or formal evaluation; a monitored recertification examination or formal evaluation; or a monitored examination of continued demonstration of qualifications by a board that is a member of the American Board of Medical Specialties or the Bureau of Osteopathic Specialists within the preceding ten years;]

[(2) obtain through extraordinary circumstances; unique training equal to the training required for specialty certification as determined by a committee of the board and approved by the board; including but not limited to participation for at least six months in a training program approved by the board within twelve months prior to the application for licensure; or]

[(3) pass the Special Purpose Examination (SPEX) within the preceding ten years.]

(e) [(f)] Texas Medical Jurisprudence Examination (JP Exam).

(1) In this chapter, when applicants are required to pass the JP exam, applicants must pass the JP exam with a score of 75 or better within three attempts.

(2) An examinee shall not be permitted to bring medical books, compendia, notes, medical journals, calculators or other help into the examination room, nor be allowed to communicate by word or sign with another examinee while the examination is in progress without permission of the presiding examiner, nor be allowed to leave the examination room except when so permitted by the presiding examiner.

(3) Irregularities during an examination such as giving or obtaining unauthorized information or aid as evidenced by observation or subsequent statistical analysis of answer sheets, shall be sufficient cause to terminate an applicant's participation in an examination, invalidate the applicant's examination results, or take other appropriate action.

(4) A person who has passed the JP Exam shall not be required to retake the Exam for another or similar license, except as a specific requirement of the board.

#### §163.7. Ten Year Rule.

An applicant who has not passed an examination listed in §163.6(a) of this title (relating to Examinations Accepted for Licensure) for licensure within the ten-year period prior to the filing date of the application must:

(1) pass a monitored specialty certification examination or formal evaluation, a monitored recertification examination or formal evaluation, or a monitored examination of continued demonstration of qualifications by a board that is a member of the American Board of Medical Specialties or the Bureau of Osteopathic Specialists within the preceding ten years;

(2) obtain through extraordinary circumstances, unique training equal to the training required for specialty certification as determined by a committee of the board and approved by the board, including but not limited to participation for at least six months in a training program approved by the board within twelve months prior to the application for licensure; or

(3) pass the Special Purpose Examination (SPEX) within the preceding ten years. The applicant must score 75 or better within three attempts.

#### §163.8. Authorization to Take Professional Licensing Examination.

(a) The purpose of this section is to set forth the requirements of a medical school institution or degree program that will authorize its graduates to take the United State Medical Licensing Examination ("USMLE"), Jurisprudence Examination, or other professional licensing examination required for licensure by the board. By agreement entered into by the board (Agreement Regarding USMLE Step 3), the board has authorized the Federation of State Medical Boards ("FSMB") to verify eligibility of applicants, register approved applicants, and assure that the USMLE is administered according to stated guidelines. The Agreement provides that the board may set requirements for eligibility for applicants to take the USMLE that may be in addition to USMLE requirements.

(b) A medical school institution or degree program shall be approved by the board for purposes of authorizing graduates of the medical school institution or degree program to take a professional licensing examination required by this title if the medical school institution or degree program:

(1) is accredited by the Liaison Committee on Medical Education or the American Osteopathic Association Bureau of Professional Education; or

(2) meets the requirements of the Educational Commission for Foreign Medical Graduates (ECFMG) for purposes of certification of foreign medical graduates.

(c) Nothing in this subsection shall be construed to limit the provisions of §155.0031(d), Occupations Code, requiring an applicant to provide information showing that each medical school attended is substantially equivalent to a Texas medical school.

#### §163.9. Only One License.

Upon the issuance of any license or permit, all previously issued licenses and permits, including postgraduate training permits, shall be considered to be terminated. A person may not have more than one license or permit at the same time, except that a license holder who is required to register periodically may hold the license and the registration permit at the same time.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Donald W. Patrick, MD, JD

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## CHAPTER 164. PHYSICIAN ADVERTISING

### 22 TAC §164.4

The Texas Medical Board proposes an amendment to §164.4, concerning Board Certification.

The amendment clarifies that "board certified" may only be advertised by a physician who is certified by a member of the American Board of Medical Specialties or the Bureau of Osteopathic Specialists or is the American Board of Oral and Maxillofacial Surgery; that membership may only be advertised in an organization that meets specified requirements; that a field of interest may only be advertised if the physician is board certified or a member of such an organization; and that board certification must be identified if a physician advertises a field of interest that is not included in the board certification.

Robert D. Simpson, General Counsel, Texas Medical Board, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications to state or local government as a result of enforcing the section as proposed. There will be no effect to individuals required to comply with the section as proposed.

Mr. Simpson also has determined that for each year of the first five years the amendment as proposed is in effect the public benefit anticipated as a result of enforcing the section will be to clarify requirements regarding advertisements that a physician is "board certified" or that the physician is a member, fellow, or diplomate of or certified by a specialty organization. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Sally Durocher, P.O. Box 2018, Austin, Texas 78768-2018. A public hearing will be held at a later date.

The amendment is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

Section 153.002, Texas Occupations Code Annotated is affected by the proposed amendment.

#### §164.4. Board Certification.

(a) A physician is authorized to use the term "board certified" [or any similar words or phrase calculated to convey the same meaning] in any advertising for his or her practice only if the specialty board that [which] conferred the certification and the certifying organization [meets the requirements in paragraphs (1) - (2) of this subsection:]

[ (4) ] [The certifying organization] is a member board of the American Board of Medical Specialties, or the Bureau of Osteopathic Specialists, or is the American Board of Oral and Maxillofacial Surgery; [or]

[ (2) ] The certifying organization requires that its applicants be certified by a separate certifying organization that is a member board of the American Board of Medical Specialties or the Bureau of Osteopathic Specialists, or appropriate Royal College of Physicians and Surgeons, and the certifying organization meets the criteria set forth in subsection (b) of this section.]

(b) A physician is authorized to advertise that the physician is a member, fellow, diplomate, or certified by a named organization or other designation calculated to convey a similar meaning, if such designation is accurate, only if the organization meets the following requirements [Each certifying organization that is not a member board of the American Board of Medical Specialties or the Bureau of Osteopathic Specialists must meet each of the requirements set forth in paragraphs (1)-(5) of this subsection]:

(1) the [certifying] organization requires all physicians who are seeking certification to successfully pass a written or an oral examination or both, which tests the applicant's knowledge and skills in the specialty or subspecialty area of medicine. All or part of the examination may be delegated to a testing organization. All examinations require a psychometric evaluation for validation;

(2) the [certifying] organization has written proof of a determination by the Internal Revenue Service that the certifying board is tax exempt under the Internal Revenue Code pursuant to Section 501(c);

(3) the organization [certifying board] has a permanent headquarters and staff;

(4) the organization [certifying board] has at least 100 duly licensed members, fellows, diplomates, or certificate holders [certifiants] from at least one-third of the states; and

(5) the [certifying] organization requires all physicians who are seeking certification to have satisfactorily completed identifiable and substantial training in the specialty or subspecialty area of medicine in which the physician is seeking certification, and the [certifying] organization utilizes appropriate peer review. This identifiable training shall be deemed acceptable unless determined by the Texas Medical Board [Board of Medical Examiners] to be inadequate

in scope, content, and duration in that specialty or subspecialty area of medicine in order to protect the public health and safety.

(c) A physician may not authorize the use of or use the term "board certified" [or any similar words or phrase calculated to convey the same meaning] if the claimed board certification has expired and has not been renewed at the time the advertising in question was ordered [published or broadcast].

(d) The terms "board eligible," "board qualified," or any similar words or phrase calculated to convey the same meaning may [shall] not be used in physician advertising.

(e) A physician's authorization of or use of the term "board certified", or any similar words or phrase calculated to convey the same meaning in any advertising for his or her practice shall constitute misleading or deceptive advertising unless the specialty board which conferred the certification and the certifying organization meet the requirements in subsection (a) [subsections (a) and (b)] of this section.

(f) A physician may advertise a field of interest if the physician is certified by, or a member, fellow, or diplomate of an organization that meets the requirements of subsection (a) or (b) of this section. [A physician who is board certified by an organization that does not meet the requirements set out in subsections (a) and (b) of this section, or otherwise has a special interest in a particular field of medicine, may include in advertisements the physician's field of interest. For each area of interest advertised the physician must clearly state in the advertising "Not certified by an organization recognized by the Texas State Board of Medical Examiners." This statement must be separate and apart from other statements and shall be displayed conspicuously with no abbreviations, changes, or additions in the quoted language so as to be easily seen or understood by an ordinary consumer.]

(g) A board certified physician who advertises board certification may advertise a field of interest that is different from the certified specialty only if the physician identifies the specialty for which the physician is board certified in an equal size of type or emphasis.

(h) A physician who is not board certified by, or a member, fellow, or diplomate of an organization that meets either the requirements of subsection (a) or (b) of this section may not advertise a field of interest, except that the physician may advertise that his or her practice is "limited to" a certain practice area.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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## CHAPTER 166. PHYSICIAN REGISTRATION

### 22 TAC §166.5

The Texas Medical Board proposes an amendment to §166.5, concerning Relicensure.

The amendment clarifies that cancellation for non-payment applies also to failure to submit a complete registration application and registration fee and that a person must reapply and qualify



for a license after a voluntary relinquishment or surrender of a license.

Robert D. Simpson, General Counsel, Texas Medical Board, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications to state or local government as a result of enforcing the section as proposed. There will be no effect to individuals required to comply with the section as proposed.

Mr. Simpson also has determined that for each year of the first five years the amendment as proposed is in effect the public benefit anticipated as a result of enforcing the section will be to provide clarification of policies of the board regarding reissuance or reinstatement of a license following cancellation for non-payment, relinquishment, or voluntary surrender. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Sally Durocher, P.O. Box 2018, Austin, Texas 78768-2018. A public hearing will be held at a later date.

The amendment is proposed under the authority of the Texas Occupations Code Annotated, §153.001 and §155.003(d) which provides authority for the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

Section 156.004, Texas Occupations Code Annotated is affected by the proposed amendment.

*§166.5. Relicensure [Following Cancellation for Nonpayment of Registration Fee].*

(a) To be relicensed following cancellation for failure to submit a complete registration application and registration fee ~~[nonpayment]~~, a physician must submit to reexamination and qualify under §164.151 of the Act and §163.10 of this title (relating to Relicensure).

(b) To be relicensed following voluntary relinquishment or surrender of a medical license, a physician must reapply and qualify under §164.151 of the Act and §196.4 of this title (relating to Relicensure After Relinquishment and Surrender of a Medical License).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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## CHAPTER 172. TEMPORARY AND LIMITED LICENSES

### SUBCHAPTER B. TEMPORARY LICENSES

#### 22 TAC §172.5

The Texas Medical Board proposes an amendment to §172.5, concerning Visiting Physician Temporary Permit and new §172.14, concerning Limited License for Practice of Administrative Medicine.

The amendment to §172.5 deletes the requirement for a Visiting Physician Temporary Permit that the applicant hold a license from another state, territory, or Canada.

New §172.14 provides a new, limited license for the practice of administrative medicine, in accordance with SB 419.

Robert D. Simpson, General Counsel, Texas Medical Board, has determined that for the first five-year period the rules are in effect there will be no fiscal implications to state or local government as a result of enforcing the sections as proposed. There will be no effect to individuals required to comply with the sections as proposed.

Mr. Simpson also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be to allow persons who are licensed in other countries the opportunity to obtain a Visiting Physician Temporary Permit in Texas so that they can obtain training from or provide training to Texas physicians in Texas, upon designation of a Texas licensed supervising physician and to allow applicants for licenses to obtain a limited license in cases in which the applicant does not intend to practice clinical medicine, allowing the Board to regulate those who practice administrative medicine without allowing them to practice clinical medicine. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Sally Durocher, P.O. Box 2018, Austin, Texas 78768-2018. A public hearing will be held at a later date.

The amendment is proposed under the authority of the Texas Occupations Code Annotated, §153.001 and §155.009, which provide the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

Section 155.009, Texas Occupations Code Annotated is affected by the proposed rule.

*§172.5. Visiting Physician Temporary Permit.*

(a) The executive director of the board may issue a permit to practice medicine to an applicant who intends to practice under the supervision of a licensed Texas physician, excluding training in postgraduate training programs, for educational purposes or in order to practice charity care to underserved populations in Texas. In order to be determined eligible for a visiting physician permit the applicant must:

~~[(1) hold a current medical license that is free of any restriction, disciplinary order or probation in another state, territory, or Canadian province;]~~

(1) ~~[(2)]~~ not have any medical license that is under restriction, disciplinary order, or probation in another state, territory, or Canadian province;

(2) ~~[(3)]~~ be supervised by a physician with an unrestricted license in Texas;

(3) ~~[(4)]~~ present written verification from the physician who will be supervising the applicant that the physician will provide continuous supervision of the applicant. Constant physical presence of the physician is not required but the physician must remain readily available; and

(4) ~~[(5)]~~ present written verification from the supervising physician as to the purpose for the requested permit.

(b) Visiting physician permits shall be valid for no more than ten working days and for a specified locale and purpose. The executive director of the board, in his/her discretion, may extend the length of the temporary permit [state] if the applicant shows good cause for why the extended time is needed.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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## SUBCHAPTER C. LIMITED LICENSES

### 22 TAC §172.14

The new section is proposed under the authority of the Texas Occupations Code Annotated, §153.001 and §155.009, which provide the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

Section 155.009, Texas Occupations Code Annotated is affected by the proposed rule.

#### §172.14. Limited License for Practice of Administrative Medicine.

(a) The board may issue a license to an applicant pursuant to the authority of §155.009, Tex. Occ. Code, that is limited to administrative medicine.

(b) "Administrative medicine," as used in this section, means:

(1) professional managerial, administrative, or supervisory activities related to the practice of medicine or the delivery of health care services;

(2) medical research;

(3) investigative medicine; and

(4) the assessment and/or determination of the medical necessity of treatment on behalf of another person, entity, or organization.

(c) An administrative medicine license does not include the authority to practice clinical medicine, prescribe dangerous drugs or controlled substances, or delegate medical acts or prescriptive authority.

(d) An applicant for an administrative medicine license must complete the same application and meet the same requirements as an applicant for a full Texas medical license, except that the applicant for an administrative medicine license shall not be required to show that the applicant has been engaged in the active practice of medicine, as defined in §163.11 of this title (relating to Active Practice of Medicine).

(e) The holder of an administrative medicine license shall be required to pay the same fees and meet all other requirements for issuance and renewal of the license as a person holding an unlimited license to practice medicine

(f) The holder of an Administrative Medicine License shall be subject to the Medical Practice Act and the Rules of the board as a person holding a full license to practice medicine.

(g) This section shall have no effect on any full Texas medical license issued prior to the effective date of this rule. The license of any physician who has agreed to a board order restricting the license to administrative medicine based on the failure to meet the licensure requirement to be engaged in the active practice of medicine, upon request of the physician, may be converted to an administrative medicine license and the board order regarding such physician shall be terminated.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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## CHAPTER 173. PHYSICIAN PROFILES

### 22 TAC §173.3

The Texas Medical Board proposes an amendment to §173.3, concerning Physician-Initiated Updates.

The amendment requires license holders to report to the board within thirty days any change of address, incarceration, or conviction of certain crimes.

Robert D. Simpson, General Counsel, Texas Medical Board, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications to state or local government as a result of enforcing the section as proposed. There will be no effect to individuals required to comply with the section as proposed.

Mr. Simpson also has determined that for each year of the first five years the amendment as proposed is in effect the public benefit anticipated as a result of enforcing the section will be to assure notification to the board of changes of address, incarceration, or conviction of certain crimes within thirty days. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Sally Durocher, P.O. Box 2018, Austin, Texas 78768-2018. A public hearing will be held at a later date.

The amendment is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

No other statutes, articles or codes are affected by the proposed amendment.

#### §173.3. Physician-Initiated Updates.

(a) - (c) (No change.)

(d) A physician shall report the following to the Board within 30 days after the event:

- (1) Any change of address;
- (2) Incarceration in a state or federal penitentiary;
- (3) An initial conviction, final conviction, or placement on deferred adjudication, community supervision, or deferred disposition for:

- (A) a felony;
- (B) a misdemeanor that directly relates to the duties and responsibilities of a physician licensed by the board;
- (C) a misdemeanor involving moral turpitude;
- (D) a misdemeanor under Chapter 22, Penal Code, other than a misdemeanor punishable by fine only;
- (E) a misdemeanor on conviction of which a defendant is required to register as a sex offender under Chapter 62, Code of Criminal Procedure;
- (F) a misdemeanor under §25.07, Penal Code; or
- (G) a misdemeanor under §25.071, Penal Code; or
- (4) An initial finding by the trier of fact of guilt of a felony under:

- (A) Chapter 481 or 483, Health and Safety Code;
- (B) Section 485.033, Health and Safety Code; or
- (C) the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. §801 et seq.).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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## CHAPTER 182. USE OF EXPERTS

### 22 TAC §182.5

The Texas Medical Board proposes an amendment to §182.5, concerning Expert Panel.

The amendment adds the American Board of Oral and Maxillofacial Surgery to the list of boards that may certify members of the board's Expert Physician Panel, and adds repeated submission of reports that are not reliable to reasons for removal of a member of the Expert Physician Panel.

Robert D. Simpson, General Counsel, Texas Medical Board, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications to state or local government as a result of enforcing the section as proposed. There will be no effect to individuals required to comply with the section as proposed.

Mr. Simpson also has determined that for each year of the first five years the amendment as proposed is in effect the public benefit anticipated as a result of enforcing the section will be to allow

review of standard of care cases by an appropriate specialist in the case of oral and maxillofacial surgery and allows the board to remove an Expert Physician Panel member because of repeated submission of reports that are not reliable. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Sally Durocher, P.O. Box 2018, Austin, Texas 78768-2018. A public hearing will be held at a later date.

The amendment is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

Section 154.056, Texas Occupations Code Annotated is affected by the proposed amendment.

### §182.5. Expert Panel.

(a) Physicians may be appointed to the Expert Panel as follows:

(1) Composition. The Expert Panel shall be composed of physicians approved by the board to act as Expert Physician Reviewers.

(2) Qualifications. To be eligible to serve on the Expert Panel, a physician must meet the following criteria:

- (A) licensed to practice medicine in Texas
- (B) certification by the American Board of Oral and Maxillofacial Surgery or an organization that is a member of the American Board of Medical Specialties or the Bureau of Osteopathic Specialists;
- (C) no history of licensure restriction;
- (D) no history of peer discipline;
- (E) acceptable malpractice complaint history; and
- (F) in active practice as defined by §163.11 of this title (relating to the Active Practice of Medicine).

(b) - (c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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## CHAPTER 184. SURGICAL ASSISTANTS

### 22 TAC §§184.4, 184.8, 184.26

The Texas Medical Board proposes amendments to §184.4, §184.8 and new §184.26, concerning Surgical Assistants.

The amendment to §184.4 deletes date sensitive provisions of the rule that are no longer applicable.

The amendment to §184.8 provides the description of procedure for obtaining a surgical assistant permit after the expiration of the prior permit and cancellation of the permit after it has been expired for one year.

New §184.26 provides for voluntary relinquishment or voluntary surrender of a surgical assistant permit.

Robert D. Simpson, General Counsel, Texas Medical Board, has determined that for the first five-year period the sections are in effect there will be no fiscal implications to state or local government as a result of enforcing the sections as proposed. There will be no effect to individuals required to comply with the sections as proposed.

Mr. Simpson also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be to clean up rule to make it more easily read and understandable; to conform the procedure for cancellation of a surgical assistant permit to that of other licensees of the agency and to assure a procedure for allowing a permit holder to relinquish a permit if no disciplinary action is pending or voluntary surrender the permit if disciplinary action is pending. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Sally Durocher, P.O. Box 2018, Austin, Texas 78768-2018. A public hearing will be held at a later date.

The amendments and new rules are proposed under the authority of the Texas Occupations Code Annotated, §206.101 and §206.210, which provides authority for the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

No other sections, articles or codes are affected by the proposed rules.

#### §184.4. *Qualifications for Licensure.*

(a) Except as otherwise provided in this section, an individual applying for licensure must:

(1) - (12) (No change.)

(13) have successfully completed an educational program in surgical assisting or a substantially equivalent educational program as outlined in subparagraphs (A) and (B) of this paragraph;

(A) A surgical assistant program or a substantially equivalent program is limited to the following:

(i) ~~[a surgical assistant program approved by the board. After September 1, 2003, applicants who wish the board to recognize their education and training at] a surgical assistant program [must demonstrate] that [the program] is in compliance with the guidelines for program accreditation established by Commission on Accreditation of Allied Health Education Programs (CAAHEP);~~

(ii) - (iv) (No change.)

(B) (No change)

(14) - (16) (No change)

~~[(b) An applicant who submits an application before September 1, 2002 must provide documentation that the applicant has passed a surgical or first assistant examination required for certification by one of the following certifying boards:]~~

~~[(1) American Board of Surgical Assistants;]~~

~~[(2) Liaison Council on Certification for the Surgical Technologist (LCC-ST); or]~~

~~[(3) National Surgical Assistant Association.]~~

~~(b) [(e)] An applicant [who submits an application on or after September 1, 2002] must provide documentation that the applicant has passed a surgical or first assistant examination required for certification by one of the following certifying boards:~~

~~(1) American Board of Surgical Assistants;~~

~~(2) Liaison Council on Certification for the Surgical Technologist (LCC-ST); or~~

~~(3) the National Surgical Assistant Association provided that the exam was administered on or after March 29, 2003.~~

~~[(d) An applicant who submits an application before September 1, 2002 and is unable to meet the educational requirements set out in subsections (a)(12) and (13) of this section must also provide documentation that the applicant:]~~

~~[(1) will complete before the third anniversary of the date the license is issued under this chapter the following academic courses approved by the board:]~~

~~[(A) anatomy;]~~

~~[(B) physiology;]~~

~~[(C) basic pharmacology;]~~

~~[(D) aseptic techniques;]~~

~~[(E) operative procedures;]~~

~~[(F) chemistry; and]~~

~~[(G) microbiology; or]~~

~~[(2) since September 30, 1995, has practiced full-time as a surgical assistant in the United States under the direct supervision of a physician licensed in the United States and has continuously been certified as a surgical assistant by one of the following national certifying boards:]~~

~~[(A) American Board of Surgical Assistants;]~~

~~[(B) Liaison Council on Certification for the Surgical Technologist (LCC-ST); or]~~

~~[(C) National Surgical Assistant Association.]~~

#### §184.8. *License Renewal.*

~~(a) - (e) (No change.)~~

~~(f) Expired Annual Registration Permits.~~

~~(1) If a surgical assistant's registration permit has been expired for 90 days or less, the surgical assistant may obtain a new permit by submitting to the board a completed permit application, the registration fee, and the penalty fee, as defined in §175.3(2) of this title (relating to Penalties).~~

~~(2) If a surgical assistant's registration permit has been expired for longer than 90 days but less than one year, the surgical assistant may obtain a new permit by submitting a completed permit application, the registration fee, and a penalty fee as defined in §175.3(2) of this title (relating to Penalties).~~

~~(3) If a surgical assistant's registration permit has been expired for one year or longer, the surgical assistant's license is automat-~~

ically canceled, unless an investigation is pending, and the surgical assistant may not obtain a new permit.

(4) Practicing as a surgical assistant after the expiration of the registration permit without obtaining a new registration permit for the current registration period has the same effect as, and is subject to all penalties of, practicing as a surgical assistant without a license.

§184.26. Voluntary Relinquishment or Surrender of a License.

Chapter 196 of this title (relating to Voluntary Relinquishment or Surrender of a License) shall govern procedures relating to surgical assistants where applicable. If the provisions of Chapter 196 conflict with the Surgical Assistant Act or rules under this chapter, the Surgical Assistant Act and provisions of this chapter shall control.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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## CHAPTER 187. PROCEDURAL RULES

### SUBCHAPTER G. SUSPENSION BY OPERATION OF LAW

#### 22 TAC §§187.70 - 187.73

The Texas Medical Board proposes new §§187.70 - 187.73, concerning Procedural Rules.

New §187.70 states the purpose of proposed rules regarding suspension of a medical license upon the licensee's incarceration in a state or federal penitentiary.

New §187.71 provides a procedure for a hearing before board representatives to consider facts regarding a licensee's incarceration in a state or federal penitentiary.

New §187.72 provides that a panel of board representatives may determine whether a licensee is incarcerated and whether any mitigating factors permit probation of suspension.

New §187.73 authorizes the termination of suspension upon the release of a licensee who has been incarcerated in a state or federal penitentiary.

Robert D. Simpson, General Counsel, Texas Medical Board, has determined that for the first five-year period the new sections are in effect there will be no fiscal implications to state or local government as a result of enforcing the sections as proposed. There will be no effect to individuals required to comply with the sections as proposed.

Mr. Simpson also has determined that for each year of the first five years the new sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be to clarify the purpose of the proposed rules; to provide a mechanism for the board to more quickly comply with the mandatory requirement to suspend a license upon incarceration in a state or federal penitentiary; to allow the board to more quickly take

action upon a licensee's incarceration in a state or federal penitentiary and to assure that a suspension based on incarceration in a state or federal penitentiary will not be terminated until the release has been properly shown to the board. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Sally Durocher, P.O. Box 2018, Austin, Texas 78768-2018. A public hearing will be held at a later date.

The new sections are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

Section 164.058, Texas Occupations Code Annotated is affected by the proposed new rules.

§187.70. Purposes and Construction.

The purpose of this subchapter is to set forth a procedure for the suspension of a medical license in the case of incarceration of a physician in a state or federal penitentiary, as provided in §164.058 of the Act ("incarceration"). The board interprets this statute as providing for suspension by operation of law. Since the board's role in such circumstances is limited to whether the licensee is incarcerated, the board has determined that the procedures set forth in this subchapter will provide due process to the licensee and protect the public.

§187.71. Hearing before a Panel of Board Representatives.

(a) Upon receipt of information that a licensee is incarcerated, the board shall schedule a hearing before a panel of board representatives at the earliest practicable time after providing the licensee with at least ten days notice.

(b) The panel shall be composed of at least two members of the board and District Review Committee. At least one member must be a physician and one member must be a public member. The panel may be the same panel that is scheduled for Informal Show Cause and Settlement Conferences.

(c) At the hearing, the licensee shall have the right to respond to the allegations, be represented by counsel, and present evidence or information to the panel.

(d) The panel must base its decision or recommendation on evidence or information that is admissible under §2001.081, Texas Administrative Procedure Act.

(e) If the licensee disputes the fact that the licensee is incarcerated, the licensee may present evidence or information showing that the licensee has not been incarcerated. If the licensee admits that the licensee is incarcerated, but requests that the panel probate an order suspending the licensee's medical license, the licensee may present evidence or information showing that probation is authorized by §164.101 and §164.102 of the Act and that the suspension should be probated.

§187.72. Decision of the Panel.

(a) If the panel determines that the licensee is incarcerated, but does not determine that the suspension should be probated, the panel shall direct the Executive Director to enter an order suspending the medical license of the licensee in accordance with §164.057 or §164.058 of the Act. Because the Act requires suspension, the board has determined that an imminent peril to the public health, safety, or welfare requires immediate effect and the order of the Executive Director shall be effective and final immediately upon entry.

(b) If the panel determines that the suspension should be probated, the panel may recommend the terms and conditions of an agreed

order to be signed by the licensee and presented to the board for approval. The agreed order shall be effective only after being signed by the licensee and approved by the board.

§187.73. Termination of Suspension.

Suspension may be terminated upon request by the licensee and proof that the licensee is no longer incarcerated.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Donald W. Patrick, MD, JD

Executive Director

Texas Medical Board

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For further information, please call: (512) 305-7016



## CHAPTER 190. DISCIPLINARY GUIDELINES

### SUBCHAPTER B. VIOLATION GUIDELINES

#### 22 TAC §190.8

The Texas Medical Board proposes an amendment to §190.8, concerning Violation Guidelines.

The amendment includes in the definition of Practice Inconsistent with Public Health and Welfare, the failure to follow standard procedures necessary to make a reasoned medical decision in the assessment and/or determination of the medical necessity of treatment for another individual, entity, or organization and providing on-call back-up by a person who is not licensed to practice medicine or who does not have proper training or experience to provide such back up; includes in the definition of unprofessional conduct that is likely to deceive, defraud, or injure the public within the meaning of the Act the failure to report abuse of a patient as required by law and intimidation of a complainant or witness regarding an investigation by the board.

Robert D. Simpson, General Counsel, Texas Medical Board, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications to state or local government as a result of enforcing the section as proposed. There will be no effect to individuals required to comply with the section as proposed.

Mr. Simpson also has determined that for each year of the first five years the amendment as proposed is in effect the public benefit anticipated as a result of enforcing the section will be to set forth standards by which the board can determine whether medical necessity decision are made; assures that physicians provide on-call-back up by a person who is properly trained and qualified; provides enforcement by the board of a physician who does not report abuse as required by law; and provides for discipline of a physician who attempts to intimidate a person who has filed a complaint or who is a witness in a board investigation. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Sally Durocher, P.O. Box 2018, Austin, Texas 78768-2018. A public hearing will be held at a later date.

The amendment is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority

for the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

Sections 164.051, 164.052 and 164.053, Texas Occupations Code Annotated are affected by the proposed amendment.

#### §190.8. Violation Guidelines.

When substantiated by credible evidence, the following acts, practices, and conduct are considered to be violations of the Act. The following shall not be considered an exhaustive or exclusive listing.

(1) Practice Inconsistent with Public Health and Welfare. Failure to practice in an acceptable professional manner consistent with public health and welfare within the meaning of the Act includes, but is not limited to:

(A) - (M) (No change.)

(N) Failure to follow standard procedures necessary to make a reasoned medical decision in the assessment and/or determination of the medical necessity of treatment for another individual, entity, or organization, including:

(i) reviewing relevant information that is reasonably available;

(ii) communicating with the treating physician as reasonably necessary to clarify information;

(iii) consulting with another physician with appropriate expertise, if the case includes issues that are outside the expertise of the physician reviewer; and

(iv) documenting a reasoned medical analysis.

(O) providing on-call back-up by a person who is not licensed to practice medicine in this state or who does not have adequate training and experience.

(2) Unprofessional and Dishonorable Conduct. Unprofessional and dishonorable conduct that is likely to deceive, defraud, or injure the public within the meaning of the Act includes, but is not limited to:

(A) - (O) (No change.)

~~[(P) failing to report suspected abuse of a patient by a third party, when the report of that abuse is required by law;]~~

~~[(P) [(Q)] behaving in a disruptive manner toward licensees, hospital personnel, other medical personnel, patients, family members or others that interferes with patient care or could be reasonably expected to adversely impact the quality of care rendered to a patient;~~

~~[(Q) [(R)] entering into any agreement whereby a licensee, peer review committee, hospital, medical staff, or medical society is restricted in providing information to the board; and~~

~~[(R) [(S)] commission of the following violations of federal and state laws whether or not there is a complaint, indictment, or conviction:~~

~~(i) any felony;~~

~~(ii) any offense in which assault or battery, or the attempt of either is an essential element;~~

~~(iii) any criminal violation of the Medical Practice Act or other statutes regulating or pertaining to the practice of medicine;~~

(iv) any criminal violation of statutes regulating other professions in the healing arts that the licensee is licensed in;

(v) any misdemeanor involving moral turpitude as defined by paragraph (6) of this section;

(vi) bribery or corrupt influence;

(vii) burglary;

(viii) child molestation;

(ix) kidnapping or false imprisonment;

(x) obstruction of governmental operations;

(xi) public indecency; and

(xii) substance abuse or substance diversion.

(S) contacting or attempting to contact a complainant or witness regarding an investigation by the board for purposes of intimidation. It is not a violation for a licensee under investigation to have contact with a complainant or witness if the contact is in the normal course of business and unrelated to the investigation.

(3) - (6) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Donald W. Patrick, MD, JD

Executive Director

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## CHAPTER 196. VOLUNTARY RELINQUISHMENT OR SURRENDER OF A MEDICAL LICENSE

### 22 TAC §196.1, §196.4

The Texas Medical Board proposes amendments to §196.1, concerning Relinquishment of License and §196.4, concerning Relicensure After Relinquishment or Surrender of License.

The amendment to §196.1 and §196.4 provides for relinquishment of a license if no disciplinary action is pending.

Robert D. Simpson, General Counsel, Texas Medical Board, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications to state or local government as a result of enforcing the sections as proposed. There will be no effect to individuals required to comply with the sections as proposed.

Mr. Simpson also has determined that for each year of the first five years the amendments as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be to provide separate designations and clarify procedures for a license holder to voluntarily request cancellation of a license, one (relinquishment) in case no disciplinary action is pending and another (voluntary surrender) in case disciplinary action is pending. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Sally Durocher, P.O. Box 2018, Austin, Texas 78768-2018. A public hearing will be held at a later date.

The amendments are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

No other statutes, articles or codes are affected by the proposed amendments.

#### §196.1. Relinquishment [~~Surrender~~] of License.

(a) Relinquishment [~~Surrender~~] by licensee.

(1) A licensee may at any time voluntarily relinquish [~~surrender~~] his or her license to practice medicine in Texas for any reason, without compulsion.

(2) Tender of the license may be by delivery by any means to the offices of the board, return receipt requested.

(b) Acceptance by the board. The board, based on a petition or request presented to the full board by a licensee or based on the recommendation of a committee, a panel, or representative(s) of the board, may consider whether to formally accept the voluntary relinquishment [~~surrender~~] of the Texas medical license; however, relinquishment [~~surrender~~] of a Texas medical license without acceptance thereof by the board, or a licensee's failure to pay his or her registration fee after initiation of an investigation but prior to imposition of a disciplinary order by the board, shall not result in cancellation of the license and shall not deprive the board of jurisdiction in regard to disciplinary action against the licensee.

#### §196.4. Relicensure [~~Reapplication for Licensure~~] After Relinquishment or Surrender of License.

In addition to other requirements established under this chapter and §164.151 of the Act, whenever a licensee relinquishes or surrenders his or her Texas medical license and reapplies for licensure, the licensee must establish competence to resume practice, payment of applicable fees, compliance with current licensure eligibility provisions as provided under Chapter 163 of this title (relating to licensure) and completion of training, courses, examinations, or seminars as directed by the board.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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## CHAPTER 198. UNLICENSED PRACTICE

### 22 TAC §§198.1 - 198.6

The Texas Medical Board proposes an amendment to §198.1 and new §§198.2 - 198.6, concerning Unlicensed Practice.

The amendment to §198.1 sets forth a purpose clause for rules to implement cease and desist authority to be used in the case of a person who is practicing medicine without a license.

New §198.2 authorizes the board to either investigate a complaint regarding the practice of medicine without a license or refer the complaint to a proper law enforcement authority, or both.

New §198.3 provides a procedure for the investigation of a complaint regarding the practice of medicine without a license and for filing a complaint with the State Office of Administrative Hearings.

New §198.4 authorizes agreed cease and desist orders.

New §198.5 provides for filing of a complaint regarding the unlicensed practice of medicine with the State Office of Administrative Hearings.

New §198.6 sets forth the penalties for violation of a cease and desist order, as authorized by statute.

Robert D. Simpson, General Counsel, Texas Medical Board, has determined that for the first five-year period the sections are in effect there will be no fiscal implications to state or local government as a result of enforcing the sections as proposed. There will be no effect to individuals required to comply with the sections as proposed.

Mr. Simpson also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be to clarify the purpose of the proposed rule; provide a method by which the board can investigate a complaint regarding the practice of medicine without a license; assure that complaints of the practice of medicine without a license will be properly investigated; allow for settlement of cases regarding the practice of medicine without a license without the expense of a formal hearing; to assure that, in absence of an agreed cease and desist order, a complaint regarding the unlicensed practice of medicine will go forward to a contested case hearing and to set forth in one place the various penalties for violation of a cease and desist order. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Sally Durocher, P.O. Box 2018, Austin, Texas 78768-2018. A public hearing will be held at a later date.

The amendment and new sections are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

Sections 165.052 and §165.001, et. seq., and 165.101 et. seq., Texas Occupations Code Annotated are affected by the proposed rules.

#### *§198.1. Purpose [Unlicensed Practice].*

The purpose of this chapter is to establish procedures for the handling of complaints regarding the unlicensed practice of medicine and other violations of the Medical Practice Act, a rule adopted by the board, or another statute relating to the practice of medicine by a person who is not licensed by the board, in accordance with Occupations Code, Title 3, Subtitle B, Chapter 165, Subchapters B, C, and D.

[(a) In the absence of board jurisdiction, complaints to the board regarding the unlicensed practice of medicine or the performance of any medical procedure without the required permit,

registration, or license shall be routed to one or more of the following for appropriate handling including further investigation, prosecution, and/or injunctive relief:]

- [(1) the Office of the Attorney General;]
- [(2) the Texas Department of Public Safety;]
- [(3) the United States Drug Enforcement Administration;]
- [(4) the Texas Department of Health;]
- [(5) the local district or county attorney's office with jurisdiction;]
- [(6) the local law enforcement agency;]
- [(7) any state or federal licensing board or other agency which maintains jurisdiction over a person who is the subject of the complaint.]

[(b) In any instance in which the board may have concurrent jurisdiction with another agency over the subject of a complaint related to the unlicensed practice of medicine or the performance of any medical procedure without the required permit, registration, or license, the board may pursue further investigation and appropriate disciplinary action before or after routing the complaint to such an agency.]

[(c) The routing of a complaint to another agency as provided by this chapter shall be in writing unless to do so is likely to jeopardize any further investigation, prosecution, or injunctive relief.]

#### *§198.2. Complaints.*

(a) Complaints to the board regarding the unlicensed practice of medicine and other violations of the Medical Practice Act, a rule adopted by the board, or another statute relating to the practice of medicine by a person who is not licensed by the board or the performance of any medical procedure without the required permit, registration, or license shall be routed to one or more of the following for appropriate handling including further investigation, cease and desist proceedings, criminal prosecution, and/or injunctive relief:

- (1) the Investigation Division of the Board;
- (2) the Office of the Attorney General;
- (3) the Texas Department of Public Safety;
- (4) the United States Drug Enforcement Administration;
- (5) the Texas Department of Health;
- (6) the local district or county attorney's office with jurisdiction;
- (7) the local law enforcement agency;
- (8) any state or federal licensing board or other agency which maintains jurisdiction over a person who is the subject of the complaint.

(b) In any instance in which the board may have concurrent jurisdiction with another agency over the subject of a complaint under this section, the board may pursue further investigation and appropriate action before or after routing the complaint to another agency.

(c) The routing of a complaint to another agency as provided by this section shall be in writing unless to do so is likely to jeopardize any further investigation, prosecution, or injunctive relief.

#### *§198.3. Investigation of Complaints.*

(a) A complaint or information that a person has committed a violation under this Chapter shall be processed in a manner similar to a complaint against a licensee (see Chapter 178 of this title (relating to Complaints)).



(b) After sufficient information and evidence has been gathered, a committee of board employees designated by the Executive Director, which may include the Executive Director, shall determine whether the information and evidence gathered indicate that a violation has occurred.

(c) If the committee of board employees determines that the information and evidence gathered indicate that a violation has occurred, the committee may recommend that a formal complaint be filed with the State Office of Administrative Hearings, providing notice and opportunity for a hearing as provided in Subchapter C of this title (relating to Formal Board Proceedings at SOAH).

§198.4. Agreed Cease and Desist Order.

(a) Pursuant to the authority of §165.052 and §164.002(a) of the Act, with the agreement of a respondent, the board may enter an agreed cease and desist order.

(b) Prior to the filing of a formal complaint, the board may notify the person who is alleged to have committed a violation under this Chapter and offer a settlement of the matter by an agreed cease and desist order.

(c) An agreed cease and desist order shall be effective and enforceable against the respondent immediately upon receipt by the board of a proposed agreed cease and desist order signed by the respondent, but shall not become final until approved by the board.

§198.5. Contested Cease and Desist Proceeding.

(a) If the committee of board employees recommends that a formal complaint be filed with the State Office of Administrative Hearings, agency staff shall file a formal complaint and request a hearing as soon as practicable, in accordance with §164.005 of the Act.

(b) Upon receipt of a proposal for decision by an Administrative Law Judge at the State Office of Administrative Hearings, the board may enter a cease and desist order.

§198.6. Violation of a Cease and Desist Order.

If a respondent violates a cease and desist order or an agreed cease and desist order, the board may:

- (1) Impose an administrative penalty against the respondent, and/or
- (2) refer the matter to the attorney general to institute action for:
  - (A) an injunction against violation of the cease and desist order,
  - (B) any administrative penalty assessed by the board,
  - (C) a civil penalty in accordance with the §165.101 of the Act,
  - (D) expenses in accordance with the Act, §165.103, and
  - (E) any other remedy provided by law.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Executive Director

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## PART 11. BOARD OF NURSE EXAMINERS

### CHAPTER 216. CONTINUING EDUCATION

#### 22 TAC §§216.1, 216.3, 216.4, 216.9, 216.11

The Board of Nurse Examiners proposes amendments to 22 Texas Administrative Code §§216.1, 216.3, 216.4, 216.9 and 216.11, relating to Continuing Education. Effective January 1, 2007, the contact hour for continuing education was changed from a 50-minute contact hour to a 60-minute contact hour. A contact hour is an organized learning activity that is either a didactic or clinical experience or an independent study. This change was implemented by American Nurses Credentialing Center's Commission on Accreditation. The amendments to §216.1(8) and §216.4(1) implement this change.

The proposed amendment to §216.3 is for the purpose of updating the CE requirements by deleting the requirement for RNs to take a CE course relating to Hepatitis C (§216.3(4)) that expired on June 1, 2004. The proposal would delete paragraph (4) and renumber subsequent paragraphs.

The proposed amendments to §216.9 and §216.11 address the updated process the Board utilizes to ensure that licensees comply with the CE requirements. In the past, the Staff would randomly audit licensees to determine whether they had complied, and if they did not provide the evidence, an investigation was opened in enforcement. The new process requires audited licensees to prove compliance with CE requisites prior to renewal, and if the proof is not forthcoming, the licensee's license is not renewed (new amendment to §216.11). This process is also compliant with Texas Occupations Code §301.303(a) that states "[t]he board...may require participation in continuing competency programs as a condition of renewal of a license." It creates a more streamlined process, and alleviates some of the burden imposed on Enforcement; therefore, §216.9(2) requiring the board to "notify the licensee of the results of the audit" becomes an unnecessary provision.

Katherine Thomas, Executive Director, has determined that for the first five-year period the proposed amendments are in effect there will be no additional fiscal implications for state or local government as a result of implementing the proposed amendments.

Ms. Thomas has also determined that for each year of the first five years the proposed amendments are in effect, the public benefit will be that the amendments will provide greater efficiency in the administration of the agency's functions. There will not be any foreseeable effect on small businesses. There are no anticipated costs to affected individuals as a result of the implementation of the proposed amendments.

Written comments on the proposal may be submitted to Katherine A. Thomas, MN, RN, Executive Director, Board of Nurse Examiners, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to joy.sparks@bne.state.tx.us, or by fax to Katherine Thomas at (512) 305-8101.

The amendments are proposed pursuant to the authority of Texas Occupations Code §301.151 which authorizes the Board of Nurse Examiners to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act.

No other articles, statutes or codes are affected by this proposal.

*§216.1. Definitions.*

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) - (7) (No change.)

(8) Contact hour--~~Sixty~~ [Fifty] consecutive minutes of participation in a learning activity.

(9) - (21) (No change.)

*§216.3. Requirements.*

Twenty contact hours of continuing education within the two years immediately preceding renewal of registration are required.

(1) - (3) (No change.)

~~{(4) For the biennium beginning 6/1/2002 and ending 6/1/2004, every license holder who renews a license to practice as a Registered Nurse in the State of Texas shall complete not less than two hours of continuing education relating to Hepatitis C. This requirement may be met through completion of either Type I or Type II approved continuing education activities, as set forth in Rule §216.4 of this title.}~~

~~{(A) The minimum 2 hours of continuing education requirement for Hepatitis C shall include information relevant to the prevention, assessment, and treatment of Hepatitis C.}~~

~~{(B) The required hours are not in addition to the requirements of paragraphs (1) and (2) of this section.}~~

(4) ~~[(5)]~~ For either two year renewal cycle preceding September 1, 2007, a license holder who renews a license to practice as a Nurse or Advanced Practice Nurse shall have completed not less than two contact hours of continuing education in bioterrorism as part of the total hours of continuing education required to be completed under (1) and (2).

(A) The minimum two contact hours required continuing education in bioterrorism shall include information relevant to preparing for, reporting medical events resulting from, and responding to the consequences of an incident of bioterrorism.

(B) The bioterrorism continuing education program will be acceptable to the board for Type I or Type II credit if it meets the following criteria:

(i) the bioterrorism course must include information relating to preparing for an incidence of bioterrorism including the clues to bioterrorism attack and the signs, symptoms, and modes of transmission of high-priority agents of bioterrorism;

(ii) the bioterrorism course must include information relating to the reporting of an incidence of bioterrorism including the ways in which to contact the proper authorities and correctly document the incidence of bioterrorism;

(iii) the bioterrorism course must include information relating to the implementation of decontamination procedures, the identification of treatment locations and treatment personnel, the acquisition of treatment-related supplies, the awareness of any facility-organized response plans, and the development of a patient care plan to address the situation; and

(iv) the bioterrorism course is designed for and targeted to Registered Nurses and Licensed Vocational Nurses.

(C) A license holder who does not comply with the continuing education requirement imposed under this paragraph is subject only to required completion of the continuing education requirement in a period set by the board of 30 days or less or an administrative penalty imposed under Subchapter K of the Nursing Practice Act, or both.

(D) A license holder who does not comply with the sanctions imposed under subparagraph (C) of this paragraph is subject to any sanction imposed under §301.453 of the Nursing Practice Act.

(5) ~~[(6)]~~ Forensic Evidence Collection.

(A) Each nurse licensed in Texas and employed in an emergency room setting on or after September 1, 2006 shall complete a minimum of two hours of continuing education relating to forensic evidence collection, as required by Texas Occupations Code §301.306 and this rule by:

(i) September 1, 2008 for nurses to whom this requirement applies who are employed in an ER setting on or before September 1, 2006, or

(ii) within two years of the initial date of employment in an emergency room setting. This requirement may be met through completion of either Type I or Type II approved continuing education activities, as set forth in §216.4 of this title.

(B) This requirement shall apply to nurses who work in an emergency room (ER) setting that is:

(i) the nurse's home unit;

(ii) an ER unit to which the nurse "floats" or schedules shifts; or

(iii) a nurse employed under contractual, temporary, per diem, agency, traveling, or other employment relationship whose duties include working in an ER.

(C) A licensed nurse in Texas who would otherwise be exempt from CE requirements during the nurse's initial licensure or first renewal periods under §216.8(b) or (c) of this title shall comply with the requirements of this section. This is a one-time requirement for each nurse employed in an emergency room setting. In compliance with §216.7(b) of this title, each licensee is responsible for maintaining records of CE attendance. Validation of course completion in Forensic Evidence Collection should be retained by the nurse indefinitely, even if a nurse changes employment.

(D) The minimum 2 hours of continuing education requirement shall include information relevant to forensic evidence collection and age or population-specific nursing interventions that may be required by other laws and/or are necessary in order to assure evidence collection that meets requirements under Texas Government Code §420.031 regarding use of a service-approved evidence collection kit and protocol. Content may also include but is not limited to documentation, history-taking skills, use of sexual assault kit, survivor symptoms, and emotional and psychological support interventions for victims.

(E) The required hours are included in the requirements of paragraphs (1) - (3) of this section relating to continuing education requirements for nurses.

(6) ~~[(7)]~~ Continuing Education Requirements for Retired Nurses Providing Only Voluntary Charity Care.

(A) In compliance with Texas Occupations Code §112.051, the Board shall adopt rules providing for reduced fees and continuing education requirements for retired health care practitioners whose only practice is voluntary charity care.

(B) A nurse who is 65 years old or older and who holds or is seeking to hold a valid volunteer retired (VR) nurse authorization:

(i) Must have completed at least 10 hours of either Type 1 or Type 2 continuing education as defined in this chapter during the previous biennium, unless the nurse also holds valid recognition as

an advanced practice nurse or is a Volunteer Retired Registered Nurse (VR-RN) with advanced practice authorization in a given role and specialty in the State of Texas.

(ii) Must have completed at least 20 hours of either Type I or Type 2 CE as defined in this chapter if authorized by the Board in a specific advanced practice role and specialty. The 20 hours of CE must meet the same criteria as APN CE defined under paragraph (3) of this section. An APN authorized as a VR-RN with APN authorization may NOT hold prescriptive authority. This does not preclude a registered nurse from placing his/her APN authorization on inactive status and applying for authorization only as a VR-RN.

(iii) Is exempt from fulfilling targeted CE requirements except as required for volunteer retired advanced practice nurses.

**§216.4. Criteria for Acceptable Continuing Education Activity.**

The following criteria have been established to guide the licensed nurse in selecting appropriate programs and to guide the provider in planning and presenting continuing education programs. Activities which may meet these criteria include: classroom instruction, individualized instruction, academic courses, self-directed study, and institutional ~~institutional~~-based instruction.

(1) Length. The program shall be at least one contact hour ~~(60 consecutive~~ [50 consecutive] minutes) in length.

(2) - (9) (No change.)

**§216.9. Audit Process.**

The board shall select a random sample of licensees 90 days prior to ~~[for]~~ each renewal month. Audit forms shall be sent to selected licensees to substantiate compliance with the continuing education requirements.

(1) (No change.)

~~[(2) The board shall notify the licensee of the results of the audit.]~~

(2) ~~[(3)]~~ Failure to notify the board of a current mailing address will not absolve the licensee from audit requirements.

(3) ~~[(4)]~~ By this rule, an audit shall be automatic for a licensee who has been found non-compliant in an immediately preceding audit.

(4) ~~[(5)]~~ Failure to complete the audit satisfactorily or falsification of records shall constitute unprofessional conduct and provide grounds for disciplinary action.

**§216.11. Consequences of Non-Compliance.**

Failure to comply with the Board's CE requirements will result in the denial of renewal. ~~[Licensees found non-compliant shall be referred to the board's practice and compliance department for possible disciplinary action.]~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 23, 2007.

TRD-200701528

Katherine A. Thomas, MN, RN

Executive Director

Board of Nurse Examiners

Earliest possible date of adoption: June 3, 2007

For further information, please call: (512) 305-6823



## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 5. TEXAS BOARD OF PARDONS AND PAROLES

#### CHAPTER 145. PAROLE

##### SUBCHAPTER A. PAROLE PROCESS

###### 37 TAC §145.3

The Texas Board of Pardons and Paroles proposes an amendment to 37 TAC §145.3, concerning policy statements relating to parole release decisions by the Board of Pardons and Paroles. The amendment is proposed for the purpose of clarifying the language of the rule.

Rissie Owens, Chair of the Board, has determined, that for the first five-year period the proposed amendment is in effect, no fiscal implications exist for state or local government as a result of enforcing or administering the amended section.

Ms. Owens also has determined that for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of the amendment to this section will be to bring the rule into compliance with current board practice. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended section as proposed.

Comments should be directed to Bettie Wells, General Counsel, Texas Board of Pardons and Paroles, 211 W. 14th Street, Suite 500, Austin, Texas 78701. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amendment is proposed under §§508.036, 508.0441, and 508.141 of the Texas Government Code. Section 508.036 provides the board with the authority to adopt rules relating to the decision-making processes used by the board and parole panels. Section 508.0441 provides the board with the authority to adopt reasonable rules as proper or necessary relating to the eligibility of an inmate for release on parole or release to mandatory supervision. Section 508.141 provides the board with the authority to consider and order release on parole.

No other statutes, articles, or codes are affected by the amendment.

###### *§145.3. Policy Statements Relating to Parole Release Decisions by the Board of Pardons and Paroles.*

To aid the Board of Pardons and Paroles in its analysis and research of parole release, the board adopts the following policies.

(1) - (2) (No change.)

(3) An offender will be considered for parole when eligible and when the offender meets the following criteria with regard to behavior during incarceration.

(A) - (E) (No change.)

(F) An offender who is otherwise eligible for release and meets the criteria for Medically Recommended Intensive Supervision (MRIS) as required by Government Code, §508.146, may be considered for release on parole ~~[if the parole review date is more than six months from the date of application for MRIS].~~

(4) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 23, 2007.

TRD-200701530

Bettie Wells

General Counsel

Texas Board of Pardons and Paroles

Earliest possible date of adoption: June 3, 2007

For further information, please call: (512) 406-5480



### 37 TAC §145.15

The Texas Board of Pardons and Paroles proposes amendments to 37 TAC §145.15, concerning action upon review; extraordinary vote. The Board proposes amendments to §145.15 to clarify the language of the rule.

Rissie Owens, Chair of the Board, has determined, that for the first five-year period the proposed amendments are in effect, no fiscal implications exist for state or local government as a result of enforcing or administering the amended section.

Ms. Owens also has determined that, for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of the amendments to this section will be to bring the rule into compliance with current board practice. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended section as proposed.

Comments should be directed to Bettie Wells, General Counsel, Texas Board of Pardons and Paroles, P.O. Box 13401, Austin, Texas 78711. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amendment is proposed under §§508.0441, 508.045, 508.046, and 508.141 of the Texas Government Code. Sections 508.0441, 508.045, 508.046, and 508.141 authorize the Board to adopt reasonable rules as proper or necessary relating to the eligibility of an offender for release to parole or mandatory supervision; relating to the extraordinary vote required for certain violent offenders; and to act on matters of release to parole or mandatory supervision.

No other statutes, articles or codes are affected by these amendments.

#### *§145.15. Action Upon Review; Extraordinary Vote.*

(a) - (d) (No change.)

(e) If a request for a special review meets the criteria set forth in §145.17(f) [(a) - (d)] of this title (relating to Action upon Special Review [~~of Information Not Previously Available~~]-Release Denied), the offender's case shall be sent to the special review panel.

(1) (No change.)

(2) When the special review panel decides the offender's case warrants a special review, the case shall be re-voted by the full board. The presiding officer shall determine the order of the voting panel [which board office will begin the voting]. Voting options are the same as those in subsections (a) - (c) of this section.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 23, 2007.

TRD-200701531

Bettie Wells

General Counsel

Texas Board of Pardons and Paroles

Earliest possible date of adoption: June 3, 2007

For further information, please call: (512) 406-5480



## PART 13. TEXAS COMMISSION ON FIRE PROTECTION

### CHAPTER 401. PRACTICE AND PROCEDURE

The Texas Commission on Fire Protection (the Commission) proposes amendments to §401.13, Computation of Time; §401.19, Petition for Adoption of Rules; §401.21, Examination Challenge; §401.23, Examination Waiver Request; §401.31, Disciplinary Proceedings in Contested Cases; §401.51, Preliminary Notice and Opportunity for Hearing; §401.101, Conduct and Decorum; and §401.103, Discovery Sanctions. The purpose of the proposed amendments is to update and correct any discrepancies in the rules.

Mr. Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal impact on state or local governments.

Mr. Soteriou has also determined that for each year of the first five years the proposed amendments are in effect, there will be no public benefit anticipated as a result of enforcing the amendments. There are no additional costs of compliance for small or large businesses or individuals that are required to comply with these proposed amendments.

Comments regarding these proposed amendments may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mailed to [info@tcfp.state.tx.us](mailto:info@tcfp.state.tx.us). Comments will be reviewed and discussed at a future Commission meeting.

#### SUBCHAPTER A. GENERAL PROVISIONS AND DEFINITIONS

##### 37 TAC §401.13

This amendment is proposed under Texas Government Code, §419.008, which provides the TCFP with the authority to propose rules for the administration of its powers and duties.

Cross reference to statute: Texas Government Code, Chapter 419.

#### *§401.13. Computation of Time.*

(a) Computing Time. In computing any period of time prescribed or allowed by these rules, by order of the Agency, or by any applicable statute, the period shall begin on the day after the act, event, or default in controversy and conclude on the last day of such computed period, unless it be a Saturday, Sunday, or a legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor a legal holiday. A party or attorney of record notified by mail under §401.61 of this title (relating to Record

[Service of Documents]) is deemed to have been notified on the date on which notice is mailed.

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 19, 2007.

TRD-200701478

Gary L. Warren, Sr.

Executive Director

Texas Commission on Fire Protection

Earliest possible date of adoption: June 3, 2007

For further information, please call: (512) 936-3838



## SUBCHAPTER B. RULEMAKING PROCEEDINGS

### 37 TAC §401.19

This amendment is proposed under Texas Government Code, §419.008, which provides the TCFP with the authority to propose rules for the administration of its powers and duties.

Cross reference to statute: Texas Government Code, Chapter 419.

#### §401.19. *Petition for Adoption of Rules.*

(a) - (b) (No change.)

(c) The executive director shall direct that the petition for adoption of rules be placed on the next agenda for discussion by the Commission [eommission] or an advisory committee with subject matter jurisdiction in accordance with §401.11 of this title (relating to Conduct of Commission and Advisory Meetings [Presentations to the Commission]).

(d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 19, 2007.

TRD-200701494

Gary L. Warren, Sr.

Executive Director

Texas Commission on Fire Protection

Earliest possible date of adoption: June 3, 2007

For further information, please call: (512) 936-3838



## SUBCHAPTER C. EXAMINATION APPEALS PROCESS

### 37 TAC §401.21, §401.23

These amendments are proposed under Texas Government Code, §419.008, which provide the TCFP with the authority to propose rules for the administration of its powers and duties.

Cross reference to statute: Texas Government Code, Chapter 419.

#### §401.21. *Examination Challenge.*

(a) - (d) (No change.)

(e) The request must be submitted within 30 days from [of] the date the [written] grade report is posted on the website [sent to the examinee].

(f) Commission staff shall schedule a conference with the applicant in accordance with §401.41 of this title (relating to Preliminary Staff Conference [Conferences]) to discuss the challenge within 30 days of the request or as soon as practical. The examinee may accept or reject the settlement recommendations of the Commission [eommission] staff. If the examinee rejects the proposed agreement, the examinee must request a formal administrative hearing as described in Subchapter F of this chapter (relating to Contested Cases) within 30 days of the action complained of.

#### §401.23. *Examination Waiver Request.*

(a) An individual who is required to take a Commission [eommission] examination pursuant to §439.15 [§439.13] of this title (relating to Testing for Proof of Proficiency) or §439.17 [§439.15] of this title (relating to Testing for Certification Status) may petition the Commission [eommission] for a waiver of the examination if the person's certificate or eligibility expired because of a good faith clerical error on the part of the individual or an employing entity.

(b) (No change.)

(c) Commission staff shall schedule a conference with the applicant in accordance with §401.41 of this title (relating to Preliminary Staff Conference [Conferences]) to discuss the waiver request within 30 days of the request or as soon as practical. The applicant may accept or reject the settlement recommendations of the Commission [eommission] staff. If the examinee rejects the proposed agreement, the applicant must request a formal administrative hearing as described in Subchapter F of this chapter (relating to Contested Cases) within 30 days of the action complained of.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 19, 2007.

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Gary L. Warren, Sr.

Executive Director

Texas Commission on Fire Protection

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For further information, please call: (512) 936-3838



## SUBCHAPTER D. DISCIPLINARY PROCEEDINGS

### 37 TAC §401.31

This amendment is proposed under Texas Government Code, §419.008, which provides the TCFP with the authority to propose rules for the administration of its powers and duties.

Cross reference to statute: Texas Government Code, Chapter 419.

#### §401.31. *Disciplinary Proceedings in Contested Cases.*

(a) If the Commission [eommission] staff recommends administrative penalties or any other sanction pursuant to Chapter 445 of this

title (relating to Administrative Inspections and Penalties) or §401.105 of this title, (relating to Administrative Penalties) for alleged violations of laws or rules administered or enforced by the Commission [commission] and its staff, the respondent may request a preliminary staff conference in accordance with §401.41 of this title (relating to Preliminary Staff Conference).

(b) Commission staff shall schedule a conference with the applicant in accordance with §401.41 of this title to discuss the alleged violations of laws or rules within 30 days of the request or as soon as practical. The respondent may accept or reject the settlement recommendations of the Commission [~~commission~~] staff. If the respondent rejects the proposed agreement, the respondent must request a formal administrative hearing as described in Subchapter F of this chapter (relating to Contested Cases) within 30 days of the notice of the staff's recommended disciplinary action.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 20, 2007.

TRD-200701499

Gary L. Warren, Sr.

Executive Director

Texas Commission on Fire Protection

Earliest possible date of adoption: June 3, 2007

For further information, please call: (512) 936-3838



## SUBCHAPTER F. CONTESTED CASES

### 37 TAC §401.51

This amendment is proposed under Texas Government Code, §419.008, which provides the TCFP with the authority to propose rules for the administration of its powers and duties.

Cross reference to statute: Texas Government Code, Chapter 419.

§401.51. *Preliminary Notice and Opportunity for Hearing.*

(a) - (b) (No change.)

(c) Staff Conference. The holder of the certificate may request a conference with the Commission's [~~commission's~~] staff for the purpose of showing compliance with all requirements of law, or to discuss informal disposition of any complaint or contested case, pursuant to the Government Code, §419.906(c) and §2001.056, and the procedures provided in §401.41 of this title (relating to Preliminary Staff Conference [~~Conferences~~]).

(d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 19, 2007.

TRD-200701496

Gary L. Warren, Sr.

Executive Director

Texas Commission on Fire Protection

Earliest possible date of adoption: June 3, 2007

For further information, please call: (512) 936-3838



## SUBCHAPTER G. CONDUCT AND DECORUM, SANCTIONS, AND PENALTIES

### 37 TAC §401.101, §401.103

These amendments are proposed under Texas Government Code, §419.008, which provide the TCFP with the authority to propose rules for the administration of its powers and duties.

Cross reference to statute: Texas Government Code, Chapter 419.

§401.101. *Conduct and Decorum.*

(a) (No change.)

(b) Exclusion or disqualification of party representatives.

(1) - (2) (No change.)

(3) Procedures for excluding or disqualifying a party representative.

(A) - (B) (No change.)

(C) Appeal of exclusion or disqualification. A party or party representative may appeal the exclusion (if it is for a period of more than eight hours) or disqualification to the executive director pursuant to §401.47 of this title (relating to Appeal [~~Appeals~~] of an Interim Order [~~Orders~~]).

(D) - (E) (No change.)

§401.103. *Discovery Sanctions.*

(a) (No change.)

(b) Appellate Review. Any discovery order or subpoena and any order imposing sanctions issued by the hearings officer is subject to review by an appeal to the executive director in accordance with §401.47 [~~§401.45~~] of this title (relating to Appeal of an Interim Order).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 19, 2007.

TRD-200701497

Gary L. Warren, Sr.

Executive Director

Texas Commission on Fire Protection

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For further information, please call: (512) 936-3838



## CHAPTER 403. CRIMINAL CONVICTIONS AND ELIGIBILITY FOR CERTIFICATION

### 37 TAC §§403.5, 403.9, 403.15

The Texas Commission on Fire Protection (the Commission) proposes amendments to §403.5, Access to Criminal History Record Information; §403.9, Mitigating Factors; and §403.15, Report of Convictions by Individual or Department. The purpose of the proposed amendments is to update and correct any discrepancies in the rules, and to eliminate the words "Commission's volunteer fire fighter certification program". The Commission no longer has a volunteer fire fighter certification program.

Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for the first five-year period

the proposed amendments are in effect there will be no fiscal impact on state or local governments.

Mr. Soteriou has also determined that for each year of the first five years the proposed amendments are in effect, there will be no public benefit anticipated as a result of enforcing the amendments. There are no additional costs of compliance for small or large businesses or individuals that are required to comply with these proposed amendments.

Comments regarding these proposed amendments may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mailed to [info@tcfp.state.tx.us](mailto:info@tcfp.state.tx.us). Comments will be reviewed and discussed at a future Commission meeting.

These amendments are proposed under Texas Government Code, §419.008, which provide the Commission with the authority to propose rules for the administration of its powers and duties.

Cross reference to statute: Texas Government Code, Chapter 419.

*§403.5. Access to Criminal History Record Information.*

(a) - (b) (No change.)

(c) Early review. A fire department that employs a person regulated by the Commission ~~[eommission]~~, a person seeking to apply for a beginning position with a fire department, a volunteer fire department with members participating in the Commission's ~~[eommission volunteer fire fighter]~~ certification program, or an individual participating in the Commission's ~~[eommission volunteer fire fighter]~~ certification program may seek the early review under this chapter of the person's present fitness to be certified prior to completing the requirements for certification by requesting such review in writing and providing the person's full name, birth date, and any additional identifying information requested by the Commission ~~[eommission]~~. A decision based on an early review does not bind the Commission ~~[eommission]~~ if there is a change in circumstances.

*§403.9. Mitigating Factors.*

(a) In addition to the factors that must be considered under §403.7 of this title (relating to Criminal Convictions ~~[Conviction]~~ Guidelines), in determining the present fitness of a person who has been convicted of a crime, the Commission ~~[eommission]~~ shall consider the following evidence:

(1) - (6) (No change.)

(b) (No change.)

*§403.15. Report of Convictions by Individual or Department.*

(a) A certificate holder shall report to the Commission ~~[eommission]~~, any conviction, other than a minor traffic offense (Class C misdemeanor) under the laws of this state, another state, the United States, or foreign country, within 14 days of the ~~[date of the]~~ conviction date.

(b) A fire department or local government regulated by the Commission ~~[eommission]~~ shall report to the Commission ~~[eommission]~~, any conviction of a certificate holder employed by the regulated entity, other than a minor traffic offense (Class C misdemeanor) under the laws of this state, another state, the United States, or foreign country, that it has knowledge of, ~~[of any certificate holder,]~~ within 14 days of the ~~[date of the]~~ conviction date.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 19, 2007.

TRD-200701477

Gary L. Warren, Sr.

Executive Director

Texas Commission on Fire Protection

Earliest possible date of adoption: June 3, 2007

For further information, please call: (512) 936-3838



## CHAPTER 427. TRAINING FACILITY CERTIFICATION

### SUBCHAPTER D. CERTIFIED TRAINING FACILITIES

#### 37 TAC §427.413

The Texas Commission on Fire Protection (Commission) proposes new §427.413, Liabilities. The purpose of the new section is to require privately owned fire academies to meet the same criteria as other schools that teach developmental career skills for fire personnel.

Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for the first five-year period the new section is in effect there will be no fiscal impact on state or local governments as these requirements apply only to privately owned schools.

Mr. Soteriou has also determined that for each year of the first five years the new section is in effect, the public benefit anticipated as a result of enforcing the new section, is that students will be protected from the unscrupulous and fiscally unsound practices of some private schools. The economic effect for individual, small and micro business will be the normal cost of obtaining liability insurance and accounting services.

Comments on the proposed new section may be submitted to Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mailed to [info@tcfp.state.tx.us](mailto:info@tcfp.state.tx.us). Comments must be received within 30 days of publication of the proposed new section in the *Texas Register*.

The new section is proposed under Texas Government Code, §419.008, which provides the Commission with the authority to propose rules for the administration of its powers and duties, and Texas Government Code, §419.022(a)(5), which provides the Commission with the authority to establish minimum educational, training, physical, and mental standards for appointment as fire protection personnel.

Cross reference statutes: Texas Government Code, §419.008 and §419.022(a)(5).

#### §427.413. Liabilities.

(a) Curriculum and Testing.

(1) The school shall be able to provide license agreements with the publisher of any curriculum used. The school may not reproduce the curriculum, or any part thereof, without describing the purpose or having the written consent by said publisher.

(2) The school shall be able to provide a valid purchase receipt or license agreement of any published test banks, or any part thereof, used in the evaluation process of any course taught.

(b) Equipment and Facilities.

(1) The school shall be able to provide written agreements for the use of any equipment not owned by the school, but use during the instruction of any student. The agreement shall dictate the terms, liability, fees, and availability of maintenance records of such equipment.

(2) The school shall be able to provide written agreements of the use of any facilities or area, not otherwise public, but used during the instruction of any student. The agreement shall dictate the terms, liability, and fees of such facilities or area.

(c) Insurance Coverage. The school shall be able to provide a general liability policy issued by a company licensed to do business in the State of Texas.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 20, 2007.

TRD-200701498

Gary L. Warren, Sr.

Executive Director

Texas Commission on Fire Protection

Earliest possible date of adoption: June 3, 2007

For further information, please call: (512) 936-3838



## CHAPTER 435. FIRE FIGHTER SAFETY

### 37 TAC §435.21

The Texas Commission on Fire Protection (the Commission) proposes an amendment to §435.21, Fire Service Joint Labor Management Wellness-Fitness Initiative. The purpose of the proposed amendment is to eliminate subsection (e) relating to the effective date in which a fire department may have to put into place a written standard operating procedure made available to the Commission upon inspection.

Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal impact on state or local governments.

Mr. Soteriou has also determined that for each year of the first five years the proposed amendment is in effect, there will be no public benefit anticipated as a result of enforcing the amendment. There are no additional costs of compliance for small or large businesses or individuals that are required to comply with this proposed amendment.

Comments regarding this proposed amendment may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mailed to [info@tcfp.state.tx.us](mailto:info@tcfp.state.tx.us). Comments will be reviewed and discussed at a future Commission meeting.

This amendment is proposed under Texas Government Code, §419.008, which provides the Commission with the authority to propose rules for the administration of its powers and duties.

Cross reference to statute: Texas Government Code, Chapter 419.

§435.21. *Fire Service Joint Labor Management Wellness-Fitness Initiative.*

(a) - (d) (No change.)

~~[(e) The effective date of this rule is October 1, 2006.]~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 19, 2007.

TRD-200701479

Gary L. Warren, Sr.

Executive Director

Texas Commission on Fire Protection

Earliest possible date of adoption: June 3, 2007

For further information, please call: (512) 936-3838



## CHAPTER 437. FEES

### 37 TAC §437.7

The Texas Commission on Fire Protection (the Commission) proposes an amendment to §437.7, Standards Manual and Certification Curriculum Manual Fees. The purpose of the proposed amendment is to update and correct any discrepancies in the rules.

Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal impact on state or local governments.

Mr. Soteriou has also determined that for each year of the first five years the proposed amendment is in effect, there will be no public benefit anticipated as a result of enforcing the amendment. There are no additional costs of compliance for small or large businesses or individuals that are required to comply with this proposed amendment.

Comments regarding this proposed amendment may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mailed to [info@tcfp.state.tx.us](mailto:info@tcfp.state.tx.us). Comments will be reviewed and discussed at a future Commission meeting.

This amendment is proposed under Texas Government Code, §419.008, which provides the Commission with the authority to propose rules for the administration of its powers and duties.

Cross reference to statute: Texas Government Code, Chapter 419.

§437.7. *Standards Manual and Certification Curriculum Manual Fees.*

(a) - (b) (No change.)

(c) The Commission ~~[commission]~~ does not provide printed copies of the manuals. A printed copy of the Commission's ~~[commis-~~



sion's] standards may be obtained from Thomson [the] West [Group], 610 Opperman Drive, Eagan, MN 55123, (800) 328-9352, by requesting "Title 37, Public Safety and Corrections" of the Texas Administrative Code. The web address for Thomson West [Group] is [www.thomsonwest.com](http://www.thomsonwest.com) [[www.westgroup.com](http://www.westgroup.com)].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 19, 2007.

TRD-200701480

Gary L. Warren, Sr.

Executive Director

Texas Commission on Fire Protection

Earliest possible date of adoption: June 3, 2007

For further information, please call: (512) 936-3838

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## CHAPTER 447. PART-TIME FIRE PROTECTION EMPLOYEE

### 37 TAC §447.1, §447.3

The Texas Commission on Fire Protection (the Commission) proposes amendments to §447.1, Minimum Standards for Part-Time Fire Protection Employees; and §447.3, Minimum Standards for Advanced Levels of Part-Time Certification. The purpose of the proposed amendments are to update and correct any discrepancies in the rules and to eliminate the word "Advanced". There are only "Higher" levels of certification, not "Advanced" levels.

Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal impact on state or local governments.

Mr. Soteriou has also determined that for each year of the first five years the proposed amendments are in effect, there will be no public benefit anticipated as a result of enforcing these amendments. There are no additional costs of compliance for small or large businesses or individuals that are required to comply with these proposed amendments.

Comments regarding these proposed amendments may be submitted, in writing, within 30 days following the publication of this

notice in the *Texas Register* to Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mailed to [info@tcfp.state.tx.us](mailto:info@tcfp.state.tx.us). Comments will be reviewed and discussed at a future Commission meeting.

These amendments are proposed under Texas Government Code, §419.008, which provides the Commission with the authority to propose rules for the administration of its powers and duties.

Cross reference to statute: Texas Government Code, Chapter 419.

§447.1. *Minimum Standards for Part-Time Fire Protection Employees.*

(a) (No change.)

(b) Part-time fire protection employees are subject to the same Commission rules that apply to full-time fire protection personnel.

§447.3. *Minimum Standards for Higher [Advanced] Levels of Part-Time Certification.*

Part-time persons seeking higher levels of certification must complete the same requirements as full-time fire protection personnel. Years of experience for part-time fire personnel shall be in calendar years [Applicants for advanced levels of part-time certification must complete the same requirements as fire protection personnel seeking higher levels of certification. Years of experience for advanced part-time certifications shall be calendar years].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 19, 2007.

TRD-200701481

Gary L. Warren, Sr.

Executive Director

Texas Commission on Fire Protection

Earliest possible date of adoption: June 3, 2007

For further information, please call: (512) 936-3838

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# WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

## TITLE 19. EDUCATION

### PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

#### CHAPTER 4. RULES APPLYING TO ALL PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN TEXAS

##### SUBCHAPTER E. APPROVAL OF DISTANCE EDUCATION, OFF-CAMPUS, AND EXTENSION COURSES AND PROGRAMS FOR PUBLIC INSTITUTIONS

#### 19 TAC §4.107

The Texas Higher Education Coordinating Board withdraws the proposed amendments to §4.107 which appeared in the February 23, 2007, issue of the *Texas Register* (32 TexReg 702).

Filed with the Office of the Secretary of State on April 17, 2007.

TRD-200701436

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Effective date: April 17, 2007

For further information, please call: (512) 427-6127

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# ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

## TITLE 7. BANKING AND SECURITIES

### PART 1. FINANCE COMMISSION OF TEXAS

#### CHAPTER 3. STATE BANK REGULATION SUBCHAPTER B. GENERAL

##### 7 TAC §3.22

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking, adopts the amendments to §3.22, concerning sale or lease agreements between a state bank and an officer, director, or principal shareholder of the bank or of an affiliate of the bank. The amendments are adopted without changes to the proposed text as published in the March 9, 2007, issue of the *Texas Register* (32 TexReg 1173), therefore the text will not be republished.

Finance Code, §33.109, is intended to apply to specified bank transactions with individuals who are also officers, directors, or principal shareholders of the bank or of an affiliate of the bank. Ambiguous statutory language in §33.109 indicates that the section also addresses transactions between a bank and an affiliate of the bank. Such transactions are adequately addressed by applicable federal law.

The amendments to §3.22 clarify that transactions between a bank and an affiliate of the bank are not included within the requirements of Finance Code, §33.109, if such transactions are subject to and in compliance with the Federal Reserve Act, §23A and §23B (12 U.S.C. §371c and §371c - 1), and implementing regulations, applicable to nonmember insured state banks by virtue of the Federal Deposit Insurance Act, §18(j)(1) (12 U.S.C. §1828(j)(1)). The previously existing exemption in subsection (f) has become obsolete and is deleted.

To enhance readability, the amendments also eliminate superfluous terms used to invoke the law regarding limited banking associations, terms that by statute are synonymous with officer, director, and principal shareholder, see Finance Code, §33.211.

The commission received no comments regarding the proposed amendments.

The amendments are adopted under Finance Code, §11.012(a), which authorizes the commission to adopt rules to implement and clarify applicable laws and to preserve or protect the safety and soundness of state banks. As required by Finance Code, §11.012(b), the commission considered the need to promote a stable banking environment, provide the public with convenient, safe, and competitive banking services, and allow for economic development within this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 20, 2007.

TRD-200701501

Sarah J. Shirley  
General Counsel

Finance Commission of Texas

Effective date: May 10, 2007

Proposal publication date: March 9, 2007

For further information, please call: (512) 475-1300

### PART 2. TEXAS DEPARTMENT OF BANKING

#### CHAPTER 21. TRUST COMPANY CORPORATE ACTIVITIES SUBCHAPTER B. TRUST COMPANY CHARTERING AND POWERS

##### 7 TAC §21.24

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking, adopts an amendment to §21.24, concerning exemptions for trust companies administering family trusts, without changes to the proposed text as published in the March 9, 2007, issue of the *Texas Register* (32 TexReg 1174). The text will not be republished.

Pursuant to Finance Code, §182.011, upon application the banking commissioner may grant exemptions to a trust company from specified provisions of the Finance Code if the banking commissioner finds that the trust company does not transact business with the public. A trust company does not transact business with the public if it acts as a corporate fiduciary for accounts in which all beneficiaries or customers are related within the fourth degree of affinity or consanguinity to a person who controls the trust company.

Section 21.24 implements Finance Code, §182.011. The amendment to §21.24(b) clarifies that a beneficial shareholder of a trust company can be considered to be a person who controls the trust company for purposes of Finance Code, §182.011(a). The amendment will eliminate certain difficulties in estate planning caused by the perceived requirement that the controlling family member must have direct voting control of the family trust company.

The designation of a beneficial shareholder as the controlling person for purposes of Finance Code, §182.011(a), is permissive and does not affect determinations of control made pursuant to Finance Code, §183.001.

The commission received no comments regarding the proposal.

The amendment is adopted pursuant to Finance Code, §182.011(e)(1), which authorizes the commission to adopt rules defining the circumstances under which a state trust company may be exempted because it does not transact business with the public.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 20, 2007.

TRD-200701504

Sarah J. Shirley  
General Counsel

Texas Department of Banking

Effective date: May 10, 2007

Proposal publication date: March 9, 2007

For further information, please call: (512) 475-1300



## PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

### CHAPTER 84. MOTOR VEHICLE INSTALLMENT SALES

#### SUBCHAPTER A. SALES FINANCE LICENSES

##### 7 TAC §84.112, §84.113

The Finance Commission of Texas (commission) adopts new 7 TAC §84.112, concerning Effect of Criminal History Information on Applicants and Licensees, and §84.113, concerning Crimes Directly Related to Fitness for License; Mitigating Factors. The new rules are adopted without changes to the proposal published in the March 9, 2007, issue of the *Texas Register* (32 TexReg 1175).

In general, the purpose of §84.112 and §84.113 is to formally state current agency practice regarding the effects of criminal history information on applicants for and current holders of motor vehicle sales finance licenses. These rules provide consistency across each category of agency licensees, as similar rules were first adopted for pawnbrokers and were recently adopted with regard to regulated lenders.

Section 84.112 describes the effect of criminal history information on applicants and licensees. Subsection (a) explains the collection and consideration of criminal history information. Subsection (b) outlines the information that must be provided on arrests, charges, indictments, and convictions. As per Texas Occupations Code, §53.022, subsection (c) of the rule outlines the factors the agency will consider in determining whether a conviction relates to the occupation of being a motor vehicle sales finance dealer. Subsection (d) provides the effects of criminal convictions on applicants and licensees, including a list of crimes involving moral character.

Section 84.113 is a companion rule to §84.112. Section 84.113 describes the crimes directly related to the fitness for holding a license, as well as mitigating factors that will be considered, as per Texas Occupations Code, §53.023.

The commission received no written comments on the proposal.

These new sections are adopted under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §348.513 grants the commission the authority to adopt rules to enforce the motor vehicle installment sales chapter.

These rules affect Texas Finance Code, Chapter 348.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 20, 2007.

TRD-200701506

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Effective date: May 10, 2007

Proposal publication date: March 9, 2007

For further information, please call: (512) 936-7640



## TITLE 10. COMMUNITY DEVELOPMENT

### PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

#### CHAPTER 1. ADMINISTRATION

##### SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

##### 10 TAC §§1.11, 1.13, 1.14

The Texas Department of Housing and Community Affairs (Department) hereby adopts the repeal of §1.11, concerning development reporting; §1.13, concerning applicant compliance with laws prohibiting discrimination; and §1.14, concerning tenant selection, without changes to the proposal as published in the March 23, 2007, issue of the *Texas Register* (32 TexReg 1692).

The Department determined as part of a rule review that these sections more effectively belong in 10 TAC Chapter 60 (relating to Compliance Administration).

No comments were received concerning the adoption of the proposed repeal.

The repeal is adopted under Texas Government Code, Chapter 2306.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 23, 2007.

TRD-200701529

Michael Gerber  
Executive Director  
Texas Department of Housing and Community Affairs  
Effective date: May 13, 2007  
Proposal publication date: March 23, 2007  
For further information, please call: (512) 475-4595



## PART 7. TEXAS RESIDENTIAL CONSTRUCTION COMMISSION

### CHAPTER 301. GENERAL PROVISIONS

#### 10 TAC §301.1

The Texas Residential Construction Commission ("commission") adopts amendments to 10 TAC §301.1, concerning definitions used in construing agency rules promulgated to implement the Texas Residential Construction Commission Act ("Act"), Title 16, Property Code, without changes to the text as published in the February 23, 2007, issue of the *Texas Register* (32 TexReg 691). The adoption adds a definition for the term "builder in good standing".

The commission received no comments on the proposed amendment.

The amendment is adopted pursuant to Property Code §408.001, which provides general authority for the commission to adopt rules necessary for the implementation of Title 16, Property Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 19, 2007.

TRD-200701490  
Susan Durso  
General Counsel  
Texas Residential Construction Commission  
Effective date: May 9, 2007  
Proposal publication date: February 23, 2007  
For further information, please call: (512) 475-0595



### CHAPTER 303. REGISTRATION SUBCHAPTER C. REGISTRATION OF THIRD-PARTY INSPECTORS

#### 10 TAC §303.207

The Texas Residential Construction Commission adopts amendments to 10 TAC §303.207, Subchapter C, setting forth the training requirements for third-party inspectors, without changes to the proposed text as published in the February 23, 2007, issue of the *Texas Register* (32 TexReg 694).

The amendments clarify that third-party inspector applicants must complete commission training or the commission will administratively withdraw the application. Further, the amendments clarify that third-party inspectors must maintain the eligibility requirements of their registration by completing the continuing education requirements of any license or certificate

required for registration, such as continuing education requirements for licensed architects and engineers and the continuing education requirements for certification as a Code Combination Inspector by the International Code Council.

The amendment adopted hereby adds a new subsection that clearly states that initial training requirements must be completed or an application will be administratively withdrawn thirty days after notification of eligibility for the initial training and fees paid will be forfeited. Other new subsections state the requirements of maintaining continuing education and the need to show proof at the time of renewal and the consequences of failure to do so.

The commission received no comments on the proposed new sections.

The amendments are adopted pursuant to Property Code §408.001, which provides general authority for the commission to adopt rules necessary for the implementation of Title 16, Property Code and Property Code §427.001.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 19, 2007.

TRD-200701493  
Susan Durso  
General Counsel  
Texas Residential Construction Commission  
Effective date: May 9, 2007  
Proposal publication date: February 23, 2007  
For further information, please call: (512) 475-0595



### SUBCHAPTER D. THIRD-PARTY WARRANTY COMPANIES

#### 10 TAC §303.268

The Texas Residential Construction Commission adopts new §303.268 of 10 TAC Chapter 303, Subchapter D, to prohibit third-party warranty companies from knowingly conducting business with unregistered builders and remodelers or builders or remodelers that are not in good standing with the commission.

The adoption includes changes to the proposed text that was published in the February 23, 2007, issue of the *Texas Register* (32 TexReg 695). The changes are the result of comments received.

The commission received comments from Greg Harwell, an attorney with Gardere, Wynne & Sewell, LLP, in Dallas, Texas. Mr. Harwell submitted the comments on behalf of himself as an individual. Mr. Harwell suggested that the commission add the word "knowingly" in order to make clear that a third-party warranty company that unknowingly entered into a contract for coverage with a builder or remodeler not properly registered with the commission would not be subject to disciplinary action. The point is well-taken and the commission accepted the suggested change by including the term "knowingly" in the new section. Mr. Harwell also suggested that the commission could provide further guidance by adding that a warranty company complies with the rules if it contacts the commission or visits the commission's web-site to confirm a person's status prior to entering or renewing a membership agreement. The commission agrees that Mr.

Harwell's suggestion would provide guidance to those affected by the rule. Therefore, the commission has also adopted Mr. Harwell's second suggestion in principle.

The commission received a similar comment from Max Hoyt, President of Aces Builder's Warranty. However, Mr. Hoyt suggested that the commission send a notice to all registered warranty companies each time a builder or remodeler falls out of compliance with the commission requirements. The commission finds that Mr. Hoyt's suggestion would shift the burden of responsibility to the commission when the commission has no way of identifying those builders or remodelers who may be seeking coverage from a third-party warranty company. Since Mr. Hoyt's concerns are adequately addressed by the changes resulting from Mr. Harwell's comments, the commission declines to adopt Mr. Hoyt's suggestion.

The new section is adopted pursuant to Property Code §408.001, which provides rulemaking authority to the commission, and Property Code §430.008 and §430.009, which provide for the registration and obligations of third-party warranty companies.

No other statutes, articles, or codes are affected by the proposal.

§303.268. *Conducting Business with Unregistered Builders/Remodelers Prohibited.*

A commission-approved third-party warranty company shall not enter knowingly into any contract or agreement to provide warranty coverage pursuant to Property Code §430.009 or to act as a guarantor for a builder or a remodeler that is not properly registered or not in good standing with the commission. A commission-approved third party warranty company complies with this section if it contacts the commission or reviews the commission's web-site to confirm a person's status prior to entering or renewing a contract or agreement to provide warranty coverage.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 19, 2007.

TRD-200701491

Susan Durso

General Counsel

Texas Residential Construction Commission

Effective date: May 9, 2007

Proposal publication date: February 23, 2007

For further information, please call: (512) 475-0595



## CHAPTER 305. PRACTICE AND PROCEDURES FOR HEARINGS AND DISCIPLINARY ACTIONS

### SUBCHAPTER B. DISCIPLINARY PROCEEDINGS

#### 10 TAC §305.28

The Texas Residential Construction Commission adopts amendments to §305.28 of 10 TAC Chapter 305, Subchapter B, regarding referral of matters to the State Office of Administrative Hearings (SOAH), without changes to the proposed text as published in the February 23, 2007, issue of the *Texas Register* (32

TexReg 696). The amendments provide that if the Executive Director believes that a registrant no longer meets the eligibility requirements or qualifications for registration, the Executive Director shall refer the matter to the SOAH. Additional changes adopted will improve the readability of the section.

The commission received no comments on the proposal.

The amendments are adopted pursuant to Property Code §408.001, which provides general authority for the commission to adopt rules necessary for the implementation of title 16 of the Property Code, the commission's enabling act and the Administrative Procedure Act, Texas Government Code ch. 2001; Property Code §416.005 and §416.006 regarding eligibility requirements for individuals and business entities; Property Code §418.001 regarding agency disciplinary actions; and Property Code §430.008 regarding eligibility for third-party warranty companies.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 19, 2007.

TRD-200701492

Susan Durso

General Counsel

Texas Residential Construction Commission

Effective date: May 9, 2007

Proposal publication date: February 23, 2007

For further information, please call: (512) 475-0595



## TITLE 16. ECONOMIC REGULATION

### PART 9. TEXAS LOTTERY COMMISSION

#### CHAPTER 402. CHARITABLE BINGO ADMINISTRATIVE RULES

#### SUBCHAPTER E. BOOKS AND RECORDS

##### 16 TAC §402.505

The Texas Lottery Commission (Commission) adopts a new rule at 16 TAC §402.505, relating to Permissible Expense without changes to the proposed text as published in the March 9, 2007, issue of the *Texas Register* (32 TexReg 1180).

The purpose of the new rule is to provide licensed authorized organizations with guidance as to what expenses are reasonable or necessary as those expenses relate to the expenditure of funds generated from the conduct of bingo games.

A public comment hearing was held on Friday, March 30, 2007. Comment was received at the comment hearing. No written comment was received during the comment period.

Suzanne Taylor, representing All Saints Bingo Unit Trust, commented that the rule looks great.

Stephen Fenoglio, an Austin attorney representing bingo licensees, commented that he supports the new rule and suggested that staff publish as quickly as possible the type of documentation expected to be maintained as outlined in subsection (d)(3) of the rule. Mr. Fenoglio also commented that

it may be helpful to have a question and answer section on the agency's web site with regard to the rule.

Agency Response: The Commission agrees with the suggestions.

David Heinlein, representing charities, commented that he supports the rule and it looks very favorable. Mr. Heinlein commented that if the rule is implemented, it would be his hope that there will be some training of those who are doing the operator training classes. Mr. Heinlein also commented that it is his hope that the rule will give some beneficial goals to look at different expenses and under these ideas of permissible expense, it is reasonable or that it is necessary.

Agency Response: The Commission agrees with the suggestion to train staff.

Steve Bresnen, representing the Bingo Interest Group, commented that they support the rule as proposed, and thinks the rule will go a long way towards helping people understand what considerations the Commission will use when determining whether an expense is reasonable or necessary.

The new rule is adopted under Occupations Code §2001.054 which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act.

The new rule implements Occupations Code, Chapter 2001.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 20, 2007.

TRD-200701508

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Effective date: May 10, 2007

Proposal publication date: March 9, 2007

For further information, please call: (512) 344-5113



## SUBCHAPTER F. PAYMENT OF TAXES, PRIZE FEES AND BONDS

### 16 TAC §402.603

The Texas Lottery Commission (Commission) adopts the repeal of 16 TAC §402.603, relating to Bonds or Other Security, without changes as published in the December 29, 2006, issue of the *Texas Register* (31 TexReg 10503). The Commission is repealing the rule because a new rule is being adopted. The new rule is substantively so different that the Commission believes the best approach in order to avoid confusion is to repeal the existing rule and adopt a new rule.

A public comment hearing was held on January 18, 2007. Comment was received at the comment hearing. No written comments were received during the comment period.

Steve Bresnen, representing the Bingo Interest Group, commented that he supports the repeal. Stephen Fenoglio, an Austin attorney, commented that he supports the repeal. Suzanne Taylor, representing All Saints Bingo Unit Trust, commented that the unit supports the repeal. Jane Thompson,

representing Thompson Allstate Bingo Supply, commented that she supports the repeal.

The repeal is adopted concurrently with the adoption of new rule 16 TAC §402.603, relating to Bonds or Other Security.

The repeal is adopted under Occupations Code §2001.054 which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act.

The repeal affects Occupations Code, Chapter 2001.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 20, 2007.

TRD-200701509

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Effective date: May 10, 2007

Proposal publication date: December 29, 2006

For further information, please call: (512) 344-5113



### 16 TAC §402.603

The Texas Lottery Commission (Commission) adopts new rule 16 TAC §402.603 relating to Bonds or Other Security without changes to the proposed text as published in the March 9, 2007, issue of the *Texas Register* (32 TexReg 1181).

The purpose of the new rule is to provide reasonable maximum opportunity for participation in charitable bingo while at the same time protecting the state's interest in connection with the timely remittance of prize fees and rental taxes by bingo licensees.

A public comment hearing was held on Friday, March 30, 2007. Comment was received at the public comment hearing. No written comment was received during the comment period.

Suzanne Taylor, representing All Saints Bingo Unit Trust, commented that the rule is awesome and she hopes it gets passed very fast.

Stephen Fenoglio, an Austin attorney, commented that he supports the new rule as proposed.

David Heinlein, representing charities, commented that he thanks the staff for the amendment to the bond issue that will allow those charitable organizations who are trying to be licensed and move into a unit, if that unit is in compliance, not to have to have a bond. Mr. Heinlein had a question about §402.603(b)(7), and specifically asked if there are two different bonds required. Agency staff answered Mr. Heinlein's question and assured him that the rule is not intended to create a double bonding situation.

Steve Bresnen, representing the Bingo Interest Group, commented that he subscribes to the comments made by Mr. Fenoglio and thanks the staff for addressing the issues that Mr. Heinlein asked about.

The new rule is adopted under Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act.

The new rule implements Occupations Code, Chapter 2001.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 20, 2007.

TRD-200701510

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Effective date: May 10, 2007

Proposal publication date: March 9, 2007

For further information, please call: (512) 344-5113



## **TITLE 25. HEALTH SERVICES**

### **PART 1. DEPARTMENT OF STATE HEALTH SERVICES**

#### **CHAPTER 157. EMERGENCY MEDICAL CARE**

#### **SUBCHAPTER G. EMERGENCY MEDICAL SERVICES TRAUMA SYSTEMS**

##### **25 TAC §157.131**

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts an amendment to §157.131, concerning the designation of Trauma Facilities and the Emergency Medical Services (EMS) Account without changes to the proposed text as published in the December 8, 2006, issue of the *Texas Register* (31 TexReg 9800) and, therefore, the section will not be republished.

##### **BACKGROUND AND PURPOSE**

The amendment to this section is necessary to provide clarification and narrow the definition of trauma care to meet the original intent outlined in Health and Safety Code, §780.004. The new language more clearly defines the types of trauma patients to be reported by hospitals in the uncompensated trauma care funding application. The existing rule language currently allows a hospital to include patient charges that meet the existing definition of trauma care but do not meet the intent of the statute in its uncompensated trauma care application. The intent of the statute is to help reimburse a portion of the uncompensated trauma care for emergent trauma patients provided by trauma centers. The existing language allows for non-emergent and non-trauma related charges to be included. Additionally, the amendment was endorsed by the Governor's EMS and Trauma Advisory Council at its May 2006 meeting. The amendment clarifies the definition of trauma care and ensures that appropriate trauma patient charges are reported in a hospital's uncompensated trauma care application.

##### **SECTION-BY-SECTION SUMMARY**

The amendment to §157.131 provides clarification to the definition of trauma care. The amendment concerns the types of patients that can be reported in a hospital's uncompensated trauma care funding application. The amendment to the definition of

trauma care requires a patient to meet a hospital's trauma team activation criteria and/or be entered into the hospital's trauma registry in addition to the existing criteria outlined in the rule language.

##### **COMMENTS**

The department, on behalf of the commission, has reviewed and prepared responses to the comments received regarding the proposed amendment during the comment period, which the commission has reviewed and accepts. Comments were received from two individuals and were not against the amendment, as discussed in the following summary of comments.

**Comment:** Concerning §157.131, one individual provided a comment asking clarification if the proposed rule language would impact Level IV trauma facilities because the individual perceived that Level IV facilities could not apply for uncompensated trauma care funding.

**Response:** The commission would like to clarify that Level IV trauma facilities can apply for uncompensated trauma care funding and the language in the proposed rule does apply. No change was made as a result of the comment.

**Comment:** Concerning §157.131, one individual provided a comment with concerns that the definition as stated in the proposed rule would not reimburse hospitals for patients that were transferred out of their facility because it specifically requires that they undergo "an operative intervention as defined in §157.131(a)(9) or were admitted as an inpatient for greater than 23-hours".

**Response:** The commission disagrees with the comment. A patient who is transferred from a facility could meet the definition of trauma care and included in the uncompensated trauma care application without having undergone an operative intervention or without being admitted for greater than 23-hours. No change was made as a result of the comment.

##### **LEGAL CERTIFICATION**

The Department of State Health Services, General Counsel, Cathy Campbell, certifies that the amendment, as adopted, has been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

##### **STATUTORY AUTHORITY**

The amendment is authorized by the Health and Safety Code, Chapter 773, Emergency Medical Services, which provides the department with the authority to adopt rules to implement the Emergency Medical Services Act; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation, provision, and administration of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 19, 2007.

TRD-200701473



Cathy Campbell  
General Counsel  
Department of State Health Services  
Effective date: May 9, 2007  
Proposal publication date: December 8, 2006  
For further information, please call: (512) 458-7111 x6972



## **TITLE 28. INSURANCE**

### **PART 1. TEXAS DEPARTMENT OF INSURANCE**

#### **CHAPTER 1. GENERAL ADMINISTRATION**

##### **SUBCHAPTER P. NEGOTIATION AND MEDIATION OF A CLAIM OF BREACH OF CONTRACT**

###### **28 TAC §§1.1807, 1.1809, 1.1815**

The Commissioner of Insurance adopts amendments to §§1.1807, 1.1809, and 1.1815, concerning negotiation and mediation of certain breach of contract claims asserted by contractors against the Department. Sections 1.1807, 1.1809, and 1.1815 are adopted without changes to the proposed text published in the January 5, 2007, issue of the *Texas Register* (32 TexReg 25).

The adopted amendments are necessary to implement HB 1940, enacted by the 79th Legislature, Regular Session, effective September 1, 2005, which amended Chapter 2260 of the Government Code to shorten some of the timeframes related to negotiation and mediation of breach of contract claims against the state. Chapter 2260 of the Government Code requires state agencies to adopt rules to govern the negotiation and mediation of certain claims for breach of contract. Title 28 Chapter 1 Subchapter P of the Texas Administrative Code establishes procedures regarding negotiation and mediation of certain claims of breach of contract asserted by a contractor against the Department under the Government Code Chapter 2260. The amendments to the rules change the required timeframes for complying with Chapter 2260 to be consistent with the newly enacted legislation.

The adopted amendment to §1.1807(c) changes the number of days that the notice of counterclaim must be delivered to the contractor after the Department's receipt of the contractor's notice of claim from 90 days to 60 days. The adopted amendment to §1.1809(b) changes the number of days that the parties shall begin negotiations from 60 days following the later of (i) the date of termination of the contract; (ii) the completion date, or substantial completion date in the case of construction projects, in the original contract; or (iii) the date the Department receives the contractor's claim of notice to 120 days following the date the Department receives the contractor's notice of claim.

The adopted amendment to §1.1809(h) changes the number of days that the parties may agree to mediate the dispute from before the 270th day to the 120th day after the Department receives the contractor's notice of claim or before the expiration of any extension agreed to by the parties.

The adopted amendment to §1.1815(a) changes the number of days that the parties may agree to mediate the dispute at any

time before the 270th day to the 120th day after the Department receives notice of the claim of breach of contract or before the expiration of any extension agreed to by the parties in writing.

In accordance with SECTIONS 9 and 10 of HB 1940, the adopted amendments are effective for any claims involving a breach of contract entered into by a unit of state government on or after the effective date of the Act, which is September 1, 2005. A claim involving a breach of contract entered into by a unit of state government before the effective date of the Act is governed by the law in effect immediately before that date.

The Department did not receive any comments on the proposal.

The amendments are adopted under the Government Code Chapter 2260 and the Insurance Code §36.001. Section §2260.052(c) provides that each unit of state government with rulemaking authority shall develop rules to govern the negotiation and mediation of a claim of breach of contract. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 19, 2007.

TRD-200701476

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Effective date: May 9, 2007

Proposal publication date: January 5, 2007

For further information, please call: (512) 463-6327



## **TITLE 37. PUBLIC SAFETY AND CORRECTIONS**

### **PART 13. TEXAS COMMISSION ON FIRE PROTECTION**

#### **CHAPTER 407. ADMINISTRATION**

##### **37 TAC §§407.1, 407.3, 407.5**

The Texas Commission on Fire Protection (the Commission) adopts the repeal of Chapter 407, Administration, consisting of the following sections: §407.1, Inscription on Texas Commission on Fire Protection Vehicles; §407.3, Historically Underutilized Businesses; and §407.5, State Vehicle Management. This repeal is adopted without changes to the proposal as published in the March 2, 2007, issue of the *Texas Register* (32 TexReg 1049) and will not be republished.

The Commission adopts the repeal of §407.1 and §407.5 because the rules have become obsolete. The Commission no longer owns or operates state vehicles.

No comments were received from the public regarding this repeal.

This repeal is adopted under Texas Government Code, §419.008, which provides the Commission with the authority to adopt rules for the administration of its powers.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Executive Director

Texas Commission on Fire Protection

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### 37 TAC §407.1

The Texas Commission on Fire Protection (the Commission) adopts new §407.1, Historically Underutilized Businesses. The new section is adopted with changes to the proposed text as published in the March 2, 2007, issue of the *Texas Register* (32 TexReg 1049) and will be republished.

The new section is adopted because of the requirement by the Texas Government Code, §2161.003 (as added by the 76th Legislature, effective September 1, 1999), that the Commission adopt, by reference, the Texas Building and Procurement Commission rules relating to the Historically Underutilized Business Program.

No comments were received from the public regarding the proposed new section.

The new section is adopted under Texas Government Code, §419.008, which provides the Commission with the authority to adopt rules for the administration of its powers and duties.

#### §407.1. *Historically Underutilized Businesses.*

(a) The Commission adopts by reference the rules of the Texas Building and Procurement Commission in Texas Administrative Code, Title 1, Part 5, Chapter 111, Subchapter B (relating to Historically Underutilized Business Program). Certification of a business as a historically underutilized business remains the responsibility of the Texas Building and Procurement Commission.

(b) The adoption of this rule is required by Texas Government Code, §2161.003 (as added by the 76th Legislature, effective September 1, 1999).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## CHAPTER 421. STANDARDS FOR CERTIFICATION

### 37 TAC §421.3, §421.5

The Texas Commission on Fire Protection (the Commission) adopts amendments to §421.3, Minimum Standards Set by the Commission; and §421.5, Definitions. The amendments are adopted with changes to the proposed text as published in the March 2, 2007, issue of the *Texas Register* (32 TexReg 1050) and will be republished.

The amendment to §421.3 adds position descriptions for Fire Officer I and Fire Officer II, which had not previously existed in §421.3. The amendment to §421.5 is adopted to change the word "certification" to "eligibility" for a fire service instructor.

The adopted amendments clarify the Commission's minimum standards and definitions for fire officer and fire instructor personnel.

No comments were received from the public regarding the proposed amendments.

The amendments are adopted under §419.022(b) of the Texas Government Code.

#### §421.3. *Minimum Standards Set by the Commission.*

(a) General statement. It shall be clearly understood that the specified minimum standards herein described are designated as a minimum program. Employing entities are encouraged to exceed the minimum program wherever possible. Continuous in-service training beyond the minimum standards for fire protection personnel is strongly recommended. Nothing in these regulations shall limit or be construed as limiting the powers of the Civil Service Commission, or the employing entity, to enact rules and regulations which establish a higher standard of training than the minimum specified, or which provides for the termination of the services of unsatisfactory employees during or upon completion of the prescribed probationary period.

#### (b) Functional position descriptions.

(1) Structural fire protection personnel. The following general position description for structural fire protection personnel serves as a guide for anyone interested in understanding the qualifications, competencies, and tasks required of the fire fighter operating in the State of Texas. It is ultimately the responsibility of an employer to define specific job descriptions within each jurisdiction.

(A) Qualifications. Successfully complete a Commission approved course; achieve a passing score on written and performance certification examinations; must be at least 18 years of age; generally, the knowledge and skills required show the need for a high school education or equivalent; ability to communicate verbally, via telephone and radio equipment; ability to lift, carry, drag, and balance weight equivalent to the average human weight; ability to interpret in English, written and oral instructions; ability to work effectively in high stress situations; ability to work effectively in an environment with loud noises and flashing lights; ability to function through an entire work shift; ability to calculate weight and volume ratios; ability to read and understand English language manuals including chemical, medical and technical terms, and road maps; ability to accurately discern street signs and address numbers; ability to document in English, all relevant information in prescribed format in light of legal ramifications of such; ability to converse in English with coworkers and other emergency response personnel. Good manual dexterity with ability to perform all tasks related to the protection of life and property; ability to bend, stoop, and crawl on uneven surfaces; ability to withstand varied environmental conditions such as extreme heat, cold, and moisture;

and ability to work in low or no light, confined spaces, elevated heights and other dangerous environments.

(B) Competency. A basic fire fighter must demonstrate competency handling emergencies utilizing equipment and skills in accordance with the objectives in Chapter 1 of the Commission's Certification Curriculum Manual.

(2) Aircraft rescue fire fighting personnel. The following general position description for aircraft rescue fire fighting personnel serves as a guide for anyone interested in understanding the qualifications, competencies, and tasks required of aircraft rescue fire fighting personnel operating in the State of Texas. It is ultimately the responsibility of an employer to define specific job descriptions within each jurisdiction.

(A) Qualifications. In addition to the qualifications for basic structural fire protection personnel: familiarity with geographic and physical components of an airport; ability to use and understand communication equipment, terminology, and procedures utilized by airports; ability and knowledge in the application of fire suppression agents; and ability to effectively perform fire suppression and rescue operations.

(B) Competency. Basic fire fighting and rescue personnel must demonstrate competency handling emergencies utilizing equipment and skills in accordance with the objectives in Chapter 2 of the Commission's Certification Curriculum Manual.

(3) Marine fire protection personnel. The following general position description for marine fire protection personnel serves as a guide for anyone interested in understanding the qualifications, competencies, and tasks required of the marine fire fighter operating in the State of Texas. It is ultimately the responsibility of an employer to define specific job descriptions within each jurisdiction.

(A) Qualifications. In addition to the qualifications for basic structural fire protection personnel: familiarity with geographic and physical components of a navigable waterway; ability to use and understand communication equipment, terminology, and procedures used by the maritime industry; and knowledge in the operation of fire fighting vessels.

(B) Competency. A marine fire fighter must demonstrate competency in handling emergencies utilizing equipment and skills in accordance with the objectives in Chapter 3 of the Commission's Certification Curriculum Manual.

(4) Fire inspection personnel. The following general position description for fire inspection personnel serves as a guide for anyone interested in understanding the qualifications, competencies, and tasks required of the fire inspector operating in the State of Texas. It is ultimately the responsibility of an employer to define specific job descriptions within each jurisdiction.

(A) Qualifications. Successfully complete a Commission approved course; achieve a passing score on certification examinations; must be at least 18 years of age; generally, the knowledge and skills required show the need for a high school education or equivalent; ability to communicate verbally, via telephone and radio equipment; ability to lift, carry, and balance weight equivalent to weight of common tools and equipment necessary for conducting an inspection; ability to interpret written and oral instructions; ability to work effectively with the public; ability to work effectively in an environment with potentially loud noises; ability to function through an entire work shift; ability to calculate area, weight and volume ratios; ability to read and understand English language manuals including chemical, construction and technical terms, building plans and road maps; ability to accurately discern street signs and address numbers; ability to document, in writ-

ing, all relevant information in prescribed format in light of legal ramifications of such; ability to converse in English with coworkers and other personnel. Demonstrate knowledge of characteristics and behavior of fire, and fire prevention principles. Good manual dexterity with the ability to perform all tasks related to the inspection of structures and property; ability to bend, stoop, and crawl on uneven surfaces; ability to climb ladders; ability to withstand varied environmental conditions such as extreme heat, cold, and moisture; and the ability to work in low light, confined spaces, elevated heights, and other dangerous environments.

(B) Competency. A fire inspector must demonstrate competency in conducting inspections utilizing equipment and skills in accordance with the objectives in Chapter 4 of the Commission's Certification Curriculum Manual.

(5) Fire Investigator personnel. The following general position description for fire investigator personnel serves as a guide for anyone interested in understanding the qualifications, competencies, and tasks required of the fire investigator operating in the State of Texas. It is ultimately the responsibility of an employer to define specific job descriptions within each jurisdiction.

(A) Qualifications. Successfully complete a Commission approved course; achieve a passing score on certification examinations; be at least 18 years of age; generally, the knowledge and skills required show the need for a high school education or equivalent; ability to communicate verbally, via telephone and radio equipment; ability to lift, carry, and balance weight equivalent to weight of common tools and equipment necessary for conducting an investigation; ability to interpret written and oral instructions; ability to work effectively with the public; ability to work effectively in a hazardous environment; ability to function through an entire work shift; ability to calculate area, weight and volume ratios; ability to read and understand English language manuals including chemical, legal and technical terms, building plans and road maps; ability to accurately discern street signs and address numbers; ability to document, in writing, all relevant information in prescribed format in light of legal ramifications of such; ability to converse in English with coworkers and other personnel. Good manual dexterity with the ability to perform all tasks related to fire investigation; ability to bend, stoop, and walk on uneven surfaces; ability to climb ladders; ability to withstand varied environmental conditions such as extreme heat, cold and moisture; and the ability to work in low light, confined spaces, elevated heights and other potentially dangerous environments.

(B) Competency. A fire investigator or arson investigator must demonstrate competency in determining fire cause and origin utilizing equipment and skills in accordance with the objectives in Chapter 5 of the Commission's Certification Curriculum Manual.

(6) Hazardous Materials Technician personnel. The following general position description for hazardous materials personnel serves as a guide for anyone interested in understanding the qualifications, competencies, and tasks required of the hazardous materials technician operating in the State of Texas. It is ultimately the responsibility of an employer to define specific job descriptions within each jurisdiction.

(A) Qualifications. In addition to the qualifications for basic structural fire protection personnel: analyze a hazardous materials incident, plan a response, implement the planned response, evaluate the progress of the planned response, and terminate the incident.

(B) Competency. A hazardous materials technician must demonstrate competency handling emergencies resulting from releases or potential releases of hazardous materials, using specialized chemical protective clothing and control equipment in accordance

with the objectives in Chapter 6 of the Commission's Certification Curriculum Manual.

(7) Driver/Operator-Pumper personnel. The following general position description for driver/operator-pumper personnel serves as a guide for anyone interested in understanding the qualifications, competencies, and tasks required of the driver/operator-pumper of a fire department pumper operating in the State of Texas. It is ultimately the responsibility of an employer to define specific job descriptions within each jurisdiction.

(A) Qualifications. In addition to the qualifications for basic structural fire protection personnel: ability to perform specified routine test, inspection, and maintenance functions; ability to perform practical driving exercises; ascertain the expected fire flow; ability to position a fire department pumper to operate at a fire hydrant; ability to produce effective streams; and supply sprinkler and standpipe systems.

(B) Competency. A driver/operator-pumper must demonstrate competency operating a fire department pumper in accordance with the objectives in Chapter 7 of the Commission's Certification Curriculum Manual.

(8) Fire Officer I personnel. The following general position description for Fire Officer I personnel serves as a guide for anyone interested in understanding the qualifications, competencies, and tasks required of the Fire Officer I operating in the State of Texas. It is ultimately the responsibility of an employer to define specific job descriptions within each jurisdiction.

(A) Qualifications. In addition to the qualifications for basic structural fire protection and Fire Instructor I personnel: supervise personnel, assign tasks at emergency operations, direct personnel during training activities, recommend action for member-related problems, coordinate assigned tasks and projects, deal with inquiries and concerns from members of the community, implement policies, perform routine administrative functions, perform preliminary fire investigation, secure an incident scene and preserve evidence, develop pre-incident plans, supervisory emergency operations, develop and implement action plans, deploy assigned resources, ensure a safe work environment for personnel, conduct initial accident investigation, and document an incident.

(B) Competency. A Fire Officer I must demonstrate competency in handling emergencies and supervising personnel utilizing skills in accordance with the objectives in Chapter 9 of the Commission's Certification Curriculum Manual.

(9) Fire Officer II personnel. The following general position description for Fire Officer II personnel serves as a guide for anyone interested in understanding the qualifications, competencies, and tasks required of the Fire Officer II operating in the State of Texas. It is ultimately the responsibility of an employer to define specific job descriptions within each jurisdiction.

(A) Qualifications. In addition to the qualifications for Fire Officer I and Fire Instructor I personnel: motivate members for maximum job performance, evaluate job performance, deliver life safety and fire prevention education programs, prepare budget requests, news releases, and policy changes, conduct pre-incident planning, fire inspections, and fire investigations, supervise multi-unit emergency operations, identify unsafe work environments or behaviors, review injury, accident, and exposure reports.

(B) Competency. A Fire Officer II must demonstrate competency in supervising personnel and coordinating multi-unit emergency operations utilizing skills in accordance with the objectives in Chapter 9 of the Commission's Certification Curriculum Manual.

(10) Fire Service Instructor I personnel. The following general position description for Fire Service Instructor I personnel serves as a guide for anyone interested in understanding the qualifications, competencies, and tasks required of the Fire Service Instructor I operating in the State of Texas. It is ultimately the responsibility of an employer to define specific job descriptions within each jurisdiction.

(A) Qualifications. In addition to successfully completing a Commission approved course and achieving a passing score on the certification examination: deliver instruction effectively from a prepared lesson plan, including use of instructional aids and evaluation instruments; adapt lessons plans to the unique requirements of both students and the authority having jurisdiction; organize the learning environment so that learning is maximized; and meet the record-keeping requirements of the authority having jurisdiction.

(B) Competency. A Fire Service Instructor I must demonstrate competency in delivering instruction in an environment organized for efficient learning while meeting the record-keeping needs of the authority having jurisdiction, utilizing skills in accordance with the objectives in Chapter 8 of the Commission's Certification Curriculum Manual.

(11) Fire Service Instructor II personnel. The following general position description for Fire Service Instructor II personnel serves as a guide for anyone interested in understanding the qualifications, competencies, and tasks required of the Fire Service Instructor II operating in the State of Texas. It is ultimately the responsibility of an employer to define specific job descriptions within each jurisdiction.

(A) Qualifications. In addition to successfully completing a Commission approved course, achieving a passing score on the certification examination, and meeting the qualifications for Fire Service Instructor I: develop individual lesson plans for a specific topic including learning objectives, instructional aids, and evaluation instruments; schedule training sessions based on the overall training plan of the authority having jurisdiction; and supervise and coordinate the activities of other instructors.

(B) Competency. A Fire Service Instructor II must demonstrate competency in developing individual lesson plans; scheduling training sessions; and supervising other instructors, utilizing skills in accordance with the objectives in Chapter 8 of the Commission's Certification Curriculum Manual.

(12) Fire Service Instructor III personnel. The following general position description for Fire Service Instructor III personnel serves as a guide for anyone interested in understanding the qualifications, competencies, and tasks required of the Fire Service Instructor III operating in the State of Texas. It is ultimately the responsibility of an employer to define specific job descriptions within each jurisdiction.

(A) Qualifications. In addition to successfully completing a Commission approved course, achieving a passing score on the certification examination, and meeting the qualifications for Fire Service Instructor II: develop comprehensive training curricula and programs for use by single or multiple organizations; conduct organizational needs analysis; and develop training goals and implementation strategies.

(B) Competency. A Fire Service Instructor III must demonstrate competency in developing comprehensive training curricula and programs; conducting organizational needs analysis; and developing training goals and implementation strategies, utilizing skills in accordance with the objectives in Chapter 8 of the Commission's Certification Curriculum Manual.

*§421.5. Definitions.*

The following words and terms, when used in this standards manual, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Admission to employment--An entry level full-time employee of a local government entity in one of the categories of fire protection personnel.

(2) Appointment--The designation or assignment of a person to a discipline regulated by the Commission. The types of appointments are:

(A) permanent appointment--The designation or assignment of certified fire protection personnel or certified part time fire protection employees to a particular discipline (See Texas Government Code, §419.032); and

(B) probationary or temporary appointment--The designation or assignment of an individual to a particular discipline, except for head of a fire department, for which the individual has passed the Commission's certification and has met the medical requirement of §423.1(b) of this title, if applicable, but has not yet been certified. (See Texas Government Code, §419.032.)

(3) Approved training--Any training used for a higher level of certification must be approved by the Commission and assigned to either the A-List or the B-List. The training submission must be in a manner specified by the Commission and contain all information requested by the Commission. The Commission will not grant credit twice for the same subject content or course. Inclusion on the A-List or B-List does not preclude the course approval process as stated elsewhere in the Standards Manual.

(4) Assigned/work--A fire protection personnel or a part-time fire protection employee shall be considered "assigned/working" in a position, any time the individual is receiving compensation and performing the duties that are regulated by the Texas Commission on Fire Protection certification and has been permanently appointed, as defined in this section, to the particular discipline.

(5) Assistant fire chief--The officer occupying the first position subordinate to the head of a fire department.

(6) Auxiliary fire fighter--A volunteer fire fighter.

(7) Benefits--Benefits shall include, but are not limited to, inclusion in group insurance plans (such as health, life, and disability) or pension plans, stipends, free water usage, and reimbursed travel expenses (such as meals, mileage, and lodging).

(8) Chief Training Officer--The individual, by whatever title he or she may be called, who coordinates the activities of a certified training facility.

(9) Class hour--Defined as not less than 50 minutes of instruction, also defined as a contact hour; a standard for certification of fire protection personnel.

(10) Code--The official legislation creating the Commission.

(11) College credits--Credits earned for studies satisfactorily completed at a regionally accredited institution of higher education and including National Fire Academy (NFA) open learning program colleges, or courses recommended for college credit by the American Council on Education (ACE) or delivered through the National Emergency Training Center (both EMI and NFA) programs. A course of study satisfactorily completed and identified on an official transcript from a college or in the ACE National Guide that is primarily related to Fire Service, Emergency Medicine, Emergency Management, or

Public Administration is defined as applicable for Fire Science college credit, and is acceptable for higher levels of certification.

(12) Commission--Texas Commission on Fire Protection.

(13) Commission-recognized training--A curriculum or training program which carries written approval from the Commission, or credit hours that appear on an official transcript from an accredited college or university, or any fire service training received from a nationally recognized source, i.e., the National Fire Academy.

(14) Compensation--Compensation is to include wages, salaries, and "per call" payments (for attending drills, meetings or answering emergencies).

(15) Expired--Any certification that has not been renewed on or before the end of the certification period.

(16) Federal fire fighter--A person as defined in the Texas Government Code, §419.084(h).

(17) Fire chief--The head of a fire department.

(18) Fire department--A department of a local government that is staffed by one or more fire protection personnel or part-time fire protection employees.

(19) Fire protection personnel--Any person who is a permanent full-time employee of a fire department or governmental entity and who is appointed duties in one of the following categories/disciplines: fire suppression, fire inspection, fire and arson investigation, marine fire fighting, aircraft rescue fire fighting, fire training, fire education, fire administration and others employed in related positions necessarily or customarily appertaining thereto.

(20) Fire suppression duties--Engaging in the controlling or extinguishment of a fire of any type or performing activities which are required for and directly related to the control and extinguishment of fires or standing by on the employer's premises or apparatus or nearby in a state of readiness to perform these duties.

(21) Full-time--An officer or employee is considered full-time if the employee works an average of 40 hours a week or averages 40 hours per week or more during a work cycle in a calendar year. For the purposes of this definition paid leave will be considered time worked.

(22) Government entity--The local authority having jurisdiction as employer of full-time fire protection personnel in a state agency, incorporated city, village, town or county, education institution or political subdivision.

(23) High school--A school accredited as a high school by the Texas Education Agency or equivalent accreditation agency from another jurisdiction.

(24) Immediately dangerous to life or health (IDLH)--An atmosphere that poses an immediate threat to life, would cause irreversible adverse health effects, or would impair an individual's ability to escape from a dangerous atmosphere.

(25) Incipient stage fire--A fire which is in the initial or beginning stage and which can be controlled or extinguished by portable fire extinguishers, Class II standpipe or small hose systems without the need for protective clothing or breathing apparatus.

(26) Interior structural fire fighting--The physical activity of fire suppression, rescue or both, inside of buildings or enclosed structures which are involved in a fire situation beyond the incipient stage. (See 29 CFR §1910.155)

(27) Lead instructor--An individual qualified as an instructor to deliver fire protection training.

(28) Municipality--Any incorporated city, village, or town of this state and any county or political subdivision or district in this state. Municipal pertains to a municipality as herein defined.

(29) National Fire Academy semester credit hours--The number of hours credited for attendance of National Fire Academy courses is determined as recommended in the most recent edition of the "National Guide to Educational Credit for Training Programs," American Council on Education (ACE).

(30) Non-self-serving affidavit--A sworn document executed by someone other than the individual seeking certification.

(31) Participating volunteer fire fighter--An individual who voluntarily seeks certification and regulation by the Commission under the Government Code, Chapter 419, Subchapter D.

(32) Participating volunteer fire service organization--A fire department that voluntarily seeks regulation by the Commission under the Government Code, Chapter 419, Subchapter D.

(33) Part-time fire protection employee--An individual who is appointed as a part-time fire protection employee and who receives compensation, including benefits and reimbursement for expenses. A part-time fire protection employee is not full-time as defined in this section.

(34) Personal alert safety system (PASS)--Devices that are certified as being compliant with NFPA 1982, and that automatically activates an alarm signal (which can also be manually activated) to alert and assist others in locating a fire fighter or emergency services person who is in danger.

(35) Political subdivision--A political subdivision of the State of Texas that includes, but is not limited to the following:

- (A) city;
- (B) county;
- (C) school district;
- (D) junior college district;
- (E) levee improvement district;
- (F) drainage district;
- (G) irrigation district;
- (H) water improvement district;
- (I) water control and improvement district;
- (J) water control and preservation district;
- (K) freshwater supply district;
- (L) navigation district;
- (M) conservation and reclamation district;
- (N) soil conservation district;
- (O) communication district;
- (P) public health district;
- (Q) river authority;
- (R) municipal utility district;
- (S) transit authority;
- (T) hospital district;

(U) emergency services district;

(V) rural fire prevention district; and

(W) any other governmental entity that:

(i) embraces a geographical area with a defined boundary;

(ii) exists for the purpose of discharging functions of the government; and

(iii) possesses authority for subordinate self-government through officers selected by it.

(36) Reciprocity for IFSAC seals--Valid documentation of accreditation from the International Fire Service Accreditation Congress used for TCFP certification which must be issued from another jurisdiction and which may only be used for obtaining initial certification.

(37) Recognition of training--A document issued by the Commission stating that an individual has completed the training requirements of a specific phase level of the Basic Fire Suppression Curriculum.

(38) School--Any school, college, university, academy, or local training program which offers fire service training and included within its meaning the combination of course curriculum, instructors, and facilities.

(39) Structural fire protection personnel--Any person who is a permanent full-time employee of a government entity who engages in fire fighting activities involving structures and may perform other emergency activities typically associated with fire fighting activities such as rescue, emergency medical response, confined space rescue, hazardous materials response, and wildland fire fighting.

(40) Trainee--An individual who is participating in a Commission approved training program.

(41) Volunteer fire protection personnel--Any person who has met the requirements for membership in a volunteer fire service organization, who is assigned duties in one of the following categories: fire suppression, fire inspection, fire and arson investigation, marine fire fighting, aircraft rescue fire fighting, fire training, fire education, fire administration and others in related positions necessarily or customarily appertaining thereto.

(42) Volunteer fire service organization--A volunteer fire department or organization not under mandatory regulation by the Texas Commission on Fire Protection.

(43) Years of experience--For purposes of higher levels of certification or fire service instructor certification:

(A) Except as provided in subparagraph (B) of this paragraph, years of experience is defined as full years of full-time, part-time or volunteer fire service while holding:

(i) a Texas Commission on Fire Protection certification as a full-time, or part-time employee of a government entity, a member in a volunteer fire service organization, and/or an employee of a regulated non-governmental fire department; or

(ii) a State Firemen's and Fire Marshals' Association advanced fire fighter certification and have successfully completed, as a minimum, the requirements for an Emergency Care Attendant (ECA) as specified by the Department of State Health Services (DSHS), or its successor agency, or its equivalent; or

(iii) an equivalent certification as a full-time fire protection personnel of a governmental entity from another jurisdiction,

including the military, or while a member in a volunteer fire service organization from another jurisdiction, and have, as a minimum, the requirements for an Emergency Care Attendant (ECA) as specified by the Department of State Health Services (DSHS), or its successor agency, or its equivalent; or

(iv) for fire service instructor eligibility only, a State Firemen's and Fire Marshals' Association Level II Instructor Certification, or an equivalent instructor certification from the Texas Department of State Health Services (DSHS) or the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE). Documentation of at least three years of experience as a volunteer in the fire service shall be in the form of a non self-serving sworn affidavit.

(B) For fire service personnel certified as required in subparagraph (A) of this paragraph on or before October 31, 1998, years of experience includes the time from the date of employment or membership to date of certification not to exceed one year.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## CHAPTER 425. FIRE SERVICE INSTRUCTORS

### 37 TAC §§425.1, 425.3, 425.5, 425.7

The Texas Commission on Fire Protection (the Commission) adopts amendments to §425.1, Minimum Standards for Fire Service Instructor Certification; §425.3, Minimum Standards for Fire Service Instructor I Certification; §425.5, Minimum Standards for Fire Service Instructor II Certification; and §425.7, Minimum Standards for Fire Service Instructor III Certification. The amendments are adopted with changes to the proposed text as published in the March 2, 2007, issue of the *Texas Register* (32 TexReg 1051) and will be republished.

These amendments clarify and delete outdated language in the rules.

The purpose of these amendments is to remove outdated language and add reciprocity for IFSAC seals.

No comments were received from the public regarding the proposed amendments.

The amendments are adopted under §419.022(b) of the Texas Government Code.

#### *§425.1. Minimum Standards for Fire Service Instructor Certification.*

(a) Training programs that are intended to satisfy the requirements for fire service instructor certification must meet the curriculum and competencies based upon NFPA 1041. All applicants for certification must meet the examination requirements of this section.

(b) Prior to being appointed to fire service instructor duties, all personnel must complete a Commission approved fire service in-

structor program and successfully pass the Commission examination pertaining to that curriculum.

(c) An out-of-state, military, or federal instructor training program may be accepted by the Commission as meeting the training requirements for certification as a fire service instructor if the training has been submitted to the Commission for evaluation and found to be equivalent to or to exceed the Commission-approved instructor course for that particular level of fire service instructor certification.

(d) An individual who holds a bachelors degree or higher in education from a regionally accredited educational institution or a teaching certificate issued by the Texas State Board of Education is considered to have training equivalent to the Commission's curriculum requirements for Instructor I, II and III training.

(e) Personnel holding any level of fire service instructor certification must comply with the continuing education requirements specified in §441.21 of this title.

#### *§425.3. Minimum Standards for Fire Service Instructor I Certification.*

(a) In order to become certified as a Fire Service Instructor I an individual must:

(1) have a minimum of three years of experience (as defined in §421.5(43) of this title) in fire protection in one or more or any combination of the following:

(A) a paid, volunteer, or regulated non-governmental fire department; or

(B) a department of a state agency, education institution or political subdivision providing fire protection training and related responsibilities; and

(i) possess valid documentation of accreditation from the International Fire Service Accreditation Congress (IFSAC) as a Fire Instructor I or II or III; or

(ii) have completed the appropriate curriculum for Fire Service Instructor I contained in Chapter 8 of the Commission's Certification Curriculum Manual, or meet the equivalence as specified in §425.1(d) of this title; and

(iii) successfully pass the applicable Commission examination as specified in Chapter 439 of this title; and

(2) have completed the field examiner orientation course as specified in Chapter 439 of this title.

(b) In order to qualify for the Fire Service Instructor I examination the individual must meet the years of experience and training requirements as outlined in this section.

#### *§425.5. Minimum Standards for Fire Service Instructor II Certification.*

(a) In order to become certified as a Fire Service Instructor II, an individual must:

(1) hold as a prerequisite a Fire Instructor I certification as defined in §425.3 of this title; and

(2) have a minimum of three years of experience (as defined in §421.5(43) of this title) in fire protection in one or more or any combination of the following:

(A) a paid, volunteer, or regulated non-governmental fire department; or

(B) a department of a state agency, education institution or political subdivision providing fire protection training and related responsibilities; and

(i) possess valid documentation of accreditation from the International Fire Service Accreditation Congress (IFSAC) as a Fire Instructor II, or III; or

(ii) have completed the appropriate curriculum for Fire Service Instructor II contained in Chapter 8 of the Commission's Certification Curriculum Manual, or meet the equivalence as specified in §425.1(d) of this title; and

(iii) successfully pass the applicable Commission examination as specified in Chapter 439 of this title.

(b) In order to qualify for the Fire Service Instructor II examination the individual must meet the years of experience and training requirements as outlined in this section.

**§425.7. Minimum Standards for Fire Service Instructor III Certification.**

(a) In order to become certified as a Fire Service Instructor III an individual must:

(1) hold as a prerequisite a Fire Instructor II Certification as defined in §425.5 of this title; and

(2) have a minimum of three years of experience (as defined in §421.5(43) of this title) in fire protection in one or more or any combination of the following:

(A) a paid, volunteer, or regulated non-governmental fire department; or

(B) a department of a state agency, education institution or political subdivision providing fire protection training and related responsibilities; and

(i) possess valid documentation of accreditation from the International Fire Service Accreditation Congress (IFSAC) as a Fire Instructor III; or

(ii) have completed the appropriate curriculum for Fire Service Instructor III contained in Chapter 8 of the Commission's Certification Curriculum Manual, or meet the equivalence as specified in §425.1(d) of this title; and

(iii) successfully pass the applicable Commission examination as specified in Chapter 439 of this title; and either

(I) hold as a prerequisite an advanced structural fire protection personnel certification, an advanced aircraft fire protection personnel certification, advanced marine fire protection personnel certification, advanced inspector certification, advanced fire investigator, or advanced arson investigator certification; or

(II) have 60 college hours from a regionally accredited educational institution; or

(III) hold an associate degree from a regionally accredited educational institution.

(b) In order to qualify for the Fire Service Instructor III examination the individual must meet the years of experience and training requirements as outlined in this section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 19, 2007.

TRD-200701484

Gary L. Warren, Sr.

Executive Director

Texas Commission on Fire Protection

Effective date: May 9, 2007

Proposal publication date: March 2, 2007

For further information, please call: (512) 936-3838



**37 TAC §425.13**

The Texas Commission on Fire Protection (the Commission) adopts the repeal of §425.13, Individuals Serving as a Coordinator Prior to March 1, 2006. The repeal is adopted without changes to the proposal as published in the March 2, 2007, issue of the *Texas Register* (32 TexReg 1052) and will not be republished.

The Commission has adopted the repeal of §425.13, because it has become obsolete. This section is a grandfather clause that is due to expire March 1, 2007.

No comments were received from the public regarding the proposed repeal.

The repeal is adopted under Texas Government Code, §419.008, which provides the Commission with the authority to adopt rules for the administration of its powers and duties; Texas Government Code, §419.022, which provides the Commission with authority to establish minimum educational, training, physical, and mental standards; and Texas Government Code, §419.032(b), which provides the Commission with the authority to establish minimum qualifications relating to continuing education programs and other matters that relate to the competence and reliability of persons to assume and discharge the responsibilities of fire protection personnel, and to prescribe the means of presenting evidence of fulfillment of those qualifications.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 19, 2007.

TRD-200701486

Gary L. Warren, Sr.

Executive Director

Texas Commission on Fire Protection

Effective date: May 9, 2007

Proposal publication date: March 2, 2007

For further information, please call: (512) 936-3838



**CHAPTER 427. TRAINING FACILITY  
CERTIFICATION**

**SUBCHAPTER D. CERTIFIED TRAINING  
FACILITIES**

**37 TAC §§427.401, 427.403, 427.405, 427.407, 427.409,  
427.411**

The Texas Commission on Fire Protection (the Commission) adopts new Subchapter D, §§427.401, 427.403, 427.405, 427.407, 427.409, and §427.411, concerning certified training facilities in Chapter 427, entitled Training Facility Certification.



The new sections are adopted with changes to the proposed text as published in the March 2, 2007, issue of the *Texas Register* (32 TexReg 1053) and will be republished.

The purpose of the adopted new rules is to require privately owned fire academies to meet the same standards as other schools that teach the development of career skills for fire protection personnel.

No comments were received from the public regarding the proposed new rules.

These new rules are adopted under §419.022(b) and §419.008 of the Texas Government Code, which provides the Commission with the authority to adopt rules for the administration of its powers and duties; Texas Government Code, §419.022(a)(5), which provides the Commission with the authority to establish minimum educational, training, physical, and mental standards for appointment as fire protection personnel.

*§427.401. General Provisions for Training Facilities Not Owned by the State of Texas or Operated by a Political Subdivision of the State of Texas.*

(a) The provisions in this subchapter apply only to certified training facilities that are not owned or operated by the State of Texas or a political subdivision of the State of Texas.

(b) Training facilities seeking certification under this subchapter must comply with all the provisions of this chapter and must also meet and comply with all Commission rules.

(c) Training facilities seeking certification under this subchapter must apply for training facility certification in each discipline they wish to teach.

(d) In order to become a Commission approved training facility under this subchapter; the provider must submit a completed Commission training facility application for certification with supporting documentation and fees. Supporting documentation will consist of:

(1) descriptions, photos and addresses of where the provider will have their course delivery and materials;

(2) documentation of how the provider will meet all the minimum requirements for each discipline for which it seeks certification;

(3) complete and correct financial statements, as specified in this subchapter, demonstrating the facility is financially stable and capable of fulfilling its commitments for training;

(4) statement of ownership which identifies the owners, stockholders, partners, representatives, management, trustees, board members;

(5) documentation showing registration with the Texas Secretary of State as a business.

*§427.403. Financial Standards.*

(a) Definitions Relating to Financial Requirements.

(1) Balance Sheet--A statement of financial position or statement of condition, showing the status of assets, liabilities and owner equity for a defined period i.e., monthly, quarterly, etc.

(2) Current ratio--ability to pay current obligations from current assets.

(3) Generally Accepted Accounting Principles (GAAP)--Conventions, rules and procedures that define accepted accounting practices to include both broad guidelines as well as detailed procedures.

(4) Generally Accepted Auditing Standards (GAAS)--Conventions, rules and procedures that define accepted audit practices.

(5) Stockholders Equity (net worth)--amount by which assets exceed liabilities.

(6) Sworn statement--A notarized statement including the following language: "I swear or affirm that the information in these statements is true and correct to the best of my knowledge."

(7) Unearned income (tuition) affidavit--A statement of income received but not yet earned during the current or most recent fiscal year. This is usually shown as a liability on a balance sheet, assuming it will be credited to income within the normal accounting cycle.

(b) The balance sheet required in this subchapter shall reflect the following:

(1) positive equity or net worth balance;

(2) unearned tuition as a current liability;

(3) a current ratio of at least one-to-one; (current assets divided by current liabilities) and

(4) stockholder's equity or net worth exceeding the amount shown for goodwill, if applicable, under assets in the balance sheet.

(c) Compilations shall be accompanied by the owner's sworn statement.

(d) All financial statements shall identify the name, license number, and licensing state of the accountant associated with the statements and be in accordance with GAAP.

(e) A school that maintains a financial responsibility composite score that meets the general standards established in federal regulations by the U.S. Department of Education for postsecondary institutions participating in student financial assistance programs authorized under Title IV of the Higher Education Act of 1965, as amended, shall be considered to have met the financial standards of this subchapter.

(f) A school that qualifies under an alternative standard but not the general standard of these federal regulations will not be considered to have met the financial standards of this subchapter unless the school meets the other requirements stated in this subchapter.

(g) Requirements for Original Approvals.

(1) The owner shall furnish the Commission with the following:

(A) a school owned by a sole proprietor must submit a reviewed personal balance sheet stating the disclosure of payments for the next five years to meet debt agreements as required by GAAP; or

(B) all other ownership structures must submit an audited balance sheet consistent with GAAP and GAAS and certified by an accountant.

(2) The facility shall submit a balance sheet, a list of the expected school-related expenses for the first three months of operation of the school; a sworn statement signed by the owner affirming the availability of sufficient cash to cover projected expenses at the date of the certification. Projected expenses may include the following:

(A) employee salaries, listed by position title, including withholding and unemployment taxes, and other related expenses;

(B) lease or rent payments for listed equipment;

(C) lease or rent payments for facilities;

(D) accounting, legal and other specifically identified professional fees;

(E) an estimate of expenses such as advertising, travel, textbooks, office and classroom supplies, printing, telephone, utilities, taxes;

(F) a projection of the gross amount of tuition and fees to be collected during each of the first two years of operation; and

(G) such other evidence as may be deemed appropriate by the Commission to establish financial stability.

(h) Prior to a change in ownership of a facility, the purchaser shall furnish the Commission a current balance sheet meeting the requirements outlined in this subchapter for original approvals, excluding the sufficient cash requirement for initial expenses. The purchaser shall furnish any other evidence deemed appropriate by the Commission to establish financial stability.

(i) The deletion or addition of any person that would be considered an owner is considered a change in facility ownership. The facility must notify the Commission of the change in ownership within 14 days of the transaction.

(j) The Commission may require submission of a full application for approval of a change in ownership.

(k) Management agreements must be disclosed to the Commission. Parties to a management agreement shall be of good reputation and character.

(l) The deletion, addition or moving of a facility will be reported to the Commission 14 days prior to the transaction.

(m) If the Commission determines that the deletion, addition or moving of a facility presents an unreasonable transportation hardship which would prevent a student from completing the training at the new location, the school shall provide a full refund of all monies paid and a release from all obligations to the student.

(n) The Commission shall be notified in writing of any legal action to which the facility, any of its owners, representatives or management employees is a party.

(o) The notification shall be within 14 days after the action is known to be filed or the facility, owner, representative or management employee is served.

(p) The facility shall include, with the required notice, a file-marked copy of the petition, complaint, or other legal instrument, including copies of any judgments.

(q) If the Commission determines that reasonable cause exists to question the validity of any financial information submitted, or the financial stability of the facility, the Commission may require at the facility's expense:

(1) an audit of the facility that has been certified by an accountant; or

(2) The owner must furnish any other evidence deemed appropriate by the Commission to establish financial stability.

(r) The entity certified under this subchapter shall maintain, in a permanent format that is acceptable and readily accessible to the Commission, a record of any funds received from, or on behalf of, the student. The entity shall clearly identify the payer, the type of funding, and the reason for the charges. These records shall be posted and kept current.

(s) An entity certified under this subchapter shall issue written receipts of any charges or payments to the student and maintain such records for review upon request by the Commission. Each separately charged item shall be clearly itemized on the student-signed receipt.

(t) An entity certified under this subchapter shall develop and maintain a cancellation and refund policy.

(u) The student shall be entitled to a full refund of all monies paid to the facility if classes or courses are cancelled by the facility.

(v) Classes or courses cancelled by the student, refund policies will be based on a prorated basis or percentage of the class or program completed by the student.

(w) An entity certified under this subchapter shall comply with Chapter 437.3 concerning certification and renewal fees.

(x) Upon application for renewal, an entity certified under this subchapter will provide a balance sheet with a sworn statement.

#### *§427.405. Policy Regarding Complaints.*

(a) Complaints. The entity shall:

(1) Submit a written grievance procedure designed to resolve disputes between current and former students and the school for Commission approval;

(2) Provide a copy of the grievance procedure to each student and maintain proof of such delivery;

(3) Maintain records regarding grievance filings and resolutions; and

(4) Diligently work to resolve all complaints at the local school level.

(b) Investigations.

(1) The Commission may investigate a complaint about an entity and may determine the extent of investigation needed by considering various factors, such as:

(A) the seriousness of the alleged violation;

(B) the source of the complaint;

(C) the school's history of compliance and complaints;

(D) the timeliness of the complaint; and

(E) any other reasonable matter deemed appropriate.

(2) The Commission may require documentation or other evidence of the violation before initiating a complaint investigation.

#### *§427.407. School Responsibilities Regarding Instructors.*

(a) The facility Chief Training Officer (CTO) shall ensure that there are an appropriate number of instructors.

(b) The facility CTO shall ensure that instructors are qualified to instruct in the subjects they are teaching or assisting.

(c) The facility CTO shall ensure continuity of instruction and that instructors provide students with a quality education.

(d) The facility CTO shall formally evaluate each instructor in writing at least annually and shall make the evaluations available for review by the Commission.

(e) The facility CTO shall ensure that students are allowed the opportunity to formally evaluate each instructor in writing and make the evaluations available for review by the Commission.

#### *§427.409. Advertising.*

(a) General Information for Advertising.

(1) A school shall not make deceptive statements in attempting to enroll students.

(2) The Commission may require a school to furnish proof to the Commission of any of its advertising claims.

(b) Advertisement Method.

(1) A school may advertise for prospective students under "instruction," "education," "training," or a similarly titled classification.

(2) No school advertisements shall use the word "wanted," "help wanted," or "trainee," either in the headline or the body of the advertisement, nor shall any advertisement indicate, in any manner, that the school has or knows of employment of any nature available to prospective students; only "placement assistance," if offered, may be advertised.

(3) A school shall not use terms to describe the significance of the approval that specify or connote greater approval. Terms that schools may not use to connote greater approval by the Commission include, but are not limited to, "accredited," "supervised," "endorsed," and "recommended." A school shall not use the words "guarantee," "guaranteed," or "free" unless approved in writing by the Commission.

(4) Any advertisement that includes a reference to awarding of credit hours shall include the statement, "limited transferability." Where a school has an arrangement with a college or university to accept transfer hours, such information may be advertised, but any limitations shall be included in the advertisement.

(c) Advertisement Content.

(1) Advertisement content shall include, and clearly indicate, the full and correct name of the school and its address, including city, as they appear on the certificate of approval.

(2) Advertisements shall not include:

(A) statements that the school or its programs are accredited unless the accreditation is that of an agency recognized by the United States Department of Education;

(B) statements that the school or its courses of instruction have been approved unless the approval can be substantiated by an appropriate certificate of approval issued by an agency of the state or federal government;

(C) statements that represent the school as an employment agency under the same name, or a confusingly similar name, or at the same location of the school; or

(D) statements as being Commission-approved or IF-SAC approved in order to solicit students prior to receiving actual Commission approval. Any such activity by the school, prior to the Commission's approval of the training course, shall constitute misrepresentation by the training facility and shall entitle each student in the course to a full refund of all monies paid and a release from all obligations to the student".

(3) A school holding a franchise to offer specialized programs or subjects not available to other schools shall not advertise such programs in such a manner as to diminish the value and scope of programs offered by other schools not holding such a franchise. Advertising of special subjects or programs offered under a franchise shall be limited to the subject or programs offered.

(4) a school shall not use endorsements, commendations, or recommendations by students in favor of a school except with the consent of the student and without any offer of financial or other material compensation. Endorsements shall bear the legal or professional name of the student.

(5) a school shall not use a photograph, cut, engraving, illustration or graphic in advertising in such a manner as to:

(A) convey a false impression of size, importance, or location of the school, equipment, or facilities associated with the school, or

(B) circumvent any of the requirements of this subchapter regarding written or oral statements.

(6) Every advertisement must clearly indicate that training is being offered, and shall not, either by actual statement, omission, or intimation, imply that prospective employees are being sought.

(d) Financial Incentives. Advertisements shall not:

(1) state that students shall be guaranteed employment while enrolled in the school;

(2) state that employment shall be guaranteed for students after graduation; or

(3) misrepresent opportunities for employment upon completion of any program; or

(4) contain dollar amounts as representative or indicative of the earning potential of graduates unless those dollar amounts have been published by the United States Department of Labor. This provision shall not be construed as prohibiting the school from providing earning potential to the student individually on the student's receipt of enrollment policies or other such Commission-approved document.

(e) Advertisements for student tuition loans shall:

(1) contain the language "financial aid available, if qualified";

(2) appear in type no larger than the font used for the name of the school and in similar color and style; and

(3) does not preclude disclosure of the school's eligibility under the various state and federal loan programs.

(f) Advertisement Monitoring.

(1) The Commission may order corrective action to counteract the effect of advertising in violation of the Act or rules, including:

(A) retraction by the school of such advertising claims published in the same manner as the claims themselves; and

(B) cancellation of telephone numbers without an automatic forwarding message.

(2) As corrective action for violations of the Act or rules, the Commission may require schools to submit all advertisements to the Commission for pre-approval at least 30 days before proposed submission of the advertisements to the advertising medium.

(3) Nothing in these guidelines shall prohibit release of information to students as required by a state or federal agency.

*§427.411. Cancellations or Suspensions.*

(a) If an approved course of instruction is discontinued for any reason, the Commission shall be notified within 72 hours (9 days) of discontinuance and furnished with the names and addresses of any students who were prevented from completion of the course of instruction due to discontinuance. Should the school fail to make arrangements satisfactory to the students and the Commission for the completion of the course of instruction, the full amount of all tuition and fees paid by the students are then due and refundable. Any course of instruction discontinued will be removed from the list of approved courses of instruction.

(b) The Commission may suspend enrollments in a particular course of instruction at any time the Commission finds cause. For purposes of this subsection, cause includes, but is not limited to:

- (1) inadequate instruction;
- (2) unapproved or inadequate curriculum;
- (3) inadequate equipment; or
- (4) inadequate facilities.

(c) If a school begins teaching a course of instruction or revised course of instruction that has not been approved by the Commission, the Commission may require the school to refund to the enrolled students all or a portion of the tuition fees.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 19, 2007.

TRD-200701485

Gary L. Warren, Sr.

Executive Director

Texas Commission on Fire Protection

Effective date: May 9, 2007

Proposal publication date: March 2, 2007

For further information, please call: (512) 936-3838



## CHAPTER 429. MINIMUM STANDARDS FOR FIRE INSPECTORS

### SUBCHAPTER B. MINIMUM STANDARDS FOR FIRE INSPECTOR CERTIFICATION

#### 37 TAC §429.207

The Texas Commission on Fire Protection (the Commission) adopts an amendment to §429.207, Minimum Standards for Advanced Fire Inspector Certification--New Track. This amendment is adopted without changes to the proposed text published in the March 2, 2007, issue of the *Texas Register* (32 TexReg 1056) and will not be republished.

This amendment clarifies the applicable job performance requirements for Fire Inspectors and Plan Examiners.

No comments were received from the public regarding the proposed amendment.

This amendment is adopted under §419.022(b) of the Texas Government Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 19, 2007.

TRD-200701487

Gary L. Warren, Sr.

Executive Director

Texas Commission on Fire Protection

Effective date: May 9, 2007

Proposal publication date: March 2, 2007

For further information, please call: (512) 936-3838



## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### PART 17. STATE PENSION REVIEW BOARD

#### CHAPTER 605. STANDARDIZED FORM

##### 40 TAC §605.1, §605.3

The State Pension Review Board adopts amendments to §605.1 and §605.3 with changes. The amendments, regarding the submission of forms, require public pension systems to submit quarterly information to the Board. The amended sections are adopted with changes to the text published in the February 9, 2007, issue of the *Texas Register* (32 TexReg 510).

The changes to the published proposed text are as follows: The change to the text proposed for §605.1 changes the word "proposes" to "adopts," and the change to the proposed text for §605.3 changes the word "date" to "day" in subsection (c). These changes to the proposed text are non-substantive, and they affect no new parties or subjects of regulation. For these reasons, re-publication of the proposed rules is not necessary before adopting the rules.

Adoption of the amendments to §605.1 and §605.3 facilitates the request by the 79th Legislature (2005) to develop an early warning system capable of analyzing all actuarially funded pension plans. By adopting a higher frequency of reporting the Board will be able to study changes nearer to the time of an occurrence. The form PRB-500, adopted by reference in §605.1(b)(5), requests data that reflects the legislative intent expressed in the 2005 General Appropriations Act for the 2006-2007 biennium. The form requests: (1) the market value of assets at the beginning and end of the quarter; (2) the payments of benefits from the fund during the quarter; (3) the contributions to the fund during the quarter; (4) the number of new retirees during the quarter; (5) the number of active members at the end of the quarter; and (6) any benefit changes to the fund implemented or considered during the quarter. This information will aid the State Pension Review Board in tracking changes in public retirement systems, as they are defined in Tex. Gov't Code §802.001, and will assist in ensuring actuarially sound retirement systems.

The State Pension Review Board received one public comment on the proposed rule amendment from interested parties. Dallas Police & Fire Pension System, the Houston Firefighters' Relief and Retirement Fund, the Houston Municipal Employees Pension System, and the Houston Police Officers' Pension System requested that a disclaimer be included in the proposed form PRB-500 allowing public pensions to explain that the numbers used to complete PRB-500 are unaudited and approximated. The State Pension Review Board is incorporating the standardized form PRB-500 by reference and the disclaimer requested is a part of that form. Given this fact, there is no reason to amend the rule being adopted.

The amendments are adopted pursuant to Texas Government Code, §801.201(c)(2) which empowers the Board to require public retirement systems to complete and submit standard forms, §801.202(1) and (2), empowers the Board to conduct continuing review and intensive studies of public retirement systems, and Acts of 2005, General Appropriations Act, Article I, Pension Review Board Rider 2, requiring the Board to develop an early warning system that addresses the factors regarding the actu-

arial and financial soundness of pension systems on a quarterly basis.

*§605.1. Adoption of Standard Forms.*

(a) The Board hereby adopts by reference the standard forms identified below under subsection (b) of this section to assist in efficiently determining the actuarial soundness and current financial condition of public retirement systems, to implement a quarterly reporting system addressing factors included in these forms, under subsection (b)(5) of this section and to assist in the conduct of the Board's business.

(b) The standard forms hereby adopted by the Board are the following

- (1) Pension System Registration--Form Series PRB-100
- (2) Benefits and Membership Report--Form Series PRB-200
- (3) Financial Statement Report--Form Series PRB-300
- (4) Actuarial Report--Form Series PRB-500
- (5) Quarterly Plan Report--Form Series: PRB-500

(c) These forms are available from the offices of the State Pension Review Board and on its web site at <http://www.prb.state.tx.us>

*§605.3. Submission of Forms.*

(a) A public retirement system must complete and submit to the Board the standard forms identified as Form numbers PRB-100,

PRB-200, PRB-300, PRB-400, and PRB-500 in §605.1 regarding adoption of standard forms.

(b) The public system must submit the forms with the information the system submits to the Board as a result of reviews and studies conducted by the Board regarding the actuarial soundness and current financial condition of the fund the system administers.

(c) A public retirement system must complete and submit to the Board Form PRB 500 no later than the 45th day after each quarter ending March, June, September and December.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 18, 2007.

TRD-200701456

Lynda Baker

Executive Assistant

State Pension Review Board

Effective date: May 8, 2007

Proposal publication date: February 9, 2007

For further information, please call: (512) 463-1736

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# REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

## Proposed Rule Reviews

Texas Education Agency

### Title 19, Part 2

The Texas Education Agency (TEA) proposes the review of 19 TAC Chapter 53, Regional Education Service Centers, pursuant to the Texas Government Code, §2001.039. The rules being reviewed in 19 TAC Chapter 53 are organized under Subchapter AA, Commissioner's Rules.

As required by the Texas Government Code, §2001.039, the TEA will accept comments as to whether the reasons for adopting 19 TAC Chapter 53 continue to exist.

The public comment period on the review of 19 TAC Chapter 53 begins May 4, 2007, and ends June 3, 2007. Comments or questions regarding this rule review may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 475-1497. Comments may also be submitted electronically to [rules@tea.state.tx.us](mailto:rules@tea.state.tx.us) or faxed to (512) 463-0028.

TRD-200701507

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Filed: April 20, 2007



Texas Commission on Fire Protection

### Title 37, Part 13

The Texas Commission on Fire Protection (the Commission) files this notice of intention to review the following chapters contained in Title 37, Part 13 of the Texas Administrative Code. This review is pursuant to §2001.039, Texas Government Code. The assessment made by the Commission at this time indicates that the reasons for adopting the rules contained in the following chapters continue to exist and it proposes to readopt these chapters:

Chapter 401. Practice and Procedure

Chapter 403. Criminal Convictions and Eligibility for Certification

Chapter 405. Charges for Public Records

Chapter 431. Fire Investigation

Chapter 433. Driver/Operator-Pumper

Chapter 435. Fire Fighter Safety

Chapter 437. Fees

Chapter 443. Certification for Curriculum Manual

Chapter 445. Administrative Inspections and Penalties

Chapter 447. Part-Time Fire Protection Employee

Chapter 449. Head of a Fire Department

Chapter 461. Committee Members

Chapter 463. Application Process

Chapter 465. Equipment Standards

Comments regarding this notice of intention to review and whether the reasons for adopting the rules continue to exist may be submitted in writing within 30 days following the publication of this notice in the *Texas Register* to Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or by e-mail at [info@tcfp.state.tx.us](mailto:info@tcfp.state.tx.us). Comments will be reviewed and discussed at a future Commission meeting.

TRD-200701489

Gary L. Warren, Sr.

Executive Director

Texas Commission on Fire Protection

Filed: April 19, 2007



Texas Board of Pardons and Paroles

### Title 37, Part 5

Under the 1997 General Appropriations Act, Article IX, Section 167, Review of Agency Rules, the Texas Board of Pardons and Paroles files this notice of intent to review and consider for readoption, revision, or repeal, Texas Administrative Code, Title 37, Public Safety and Corrections, Part 5, Chapter 145 (Parole) Subchapter A (Parole Process).

The Board undertakes its review pursuant to Government Code, §2001.039, Government Code. The Board will accept comments for 30 days following the publication of this notice in the *Texas Register* and will assess whether the reasons for adopting the sections under review continue to exist. Proposed changes to the rule as a result of the rule review will be published in the Proposed Rules section of the *Texas Register*. The proposed rules will be open for public comment prior to final adoption by the Board, in accordance with the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Any questions or written comments pertaining to this notice of intention to review should for the next 30-day comment period be directed

to Bettie Wells, General Counsel, Texas Board of Pardons and Paroles, 209 W. 14th Street, Suite 500, Austin, TX 78701, or by e-mail to [bet-tie.wells@tdcj.state.tx.us](mailto:bet-tie.wells@tdcj.state.tx.us).

TRD-200701532

Bettie Wells

General Counsel

Texas Board of Pardons and Paroles

Filed: April 23, 2007



Texas Board of Professional Geoscientists

**Title 22, Part 39**

In accordance with Government Code, §2001.039, the Texas Board of Professional Geoscientists files this notice of intent to review and consider for readoption, amendment, or repeal of 22 TAC Chapters 850 and 851, as follows:

Chapter 850

Subchapter A (Authority and Responsibilities)

Subchapter B (Organization)

Subchapter C (Fees)

Chapter 851

Subchapter A (Licensing)

Subchapter B (Code of Professional Conduct)

Subchapter C (Compliance and Enforcement)

Subchapter D (Hearings, Contested Cases)

The Texas Board of Professional Geoscientists will determine whether the reasons for adopting the sections under review continue to exist. Any changes to the sections proposed as a result of this rule review will be published in the Proposed Rules section of the *Texas Register*.

Written comments relating to this rule review will be accepted for a 30-day period following publication of this notice in the *Texas Register*. Comments should be directed to Molly Roman, Administrative Coordinator, Texas Board of Professional Geoscientists, P. O. Box 13225, Austin, Texas 78711, or by e-mail to [mroman@tbpg.state.tx.us](mailto:mroman@tbpg.state.tx.us).

TRD-200701533

Vincent Houston

Acting Executive Director

Texas Board of Professional Geoscientists

Filed: April 23, 2007



Texas Real Estate Commission

**Title 22, Part 23**

The Texas Real Estate Commission (TREC) proposes to review Chapter 535 - General Provisions (§§535.1 - 535.81) and Chapter 541 - Rules Relating to the Provisions of Texas Occupations Code Chapter 53 in accordance with the Texas Government Code, §2001.03.

Review of the rules under this chapter will determine whether the reasons for adoption of the rules continue to exist. During the review process, TREC may also determine that a specific rule may need to be amended to further refine TREC's legal and policy considerations, whether the rules reflect current TREC procedures, that no changes to a rule as currently in effect are necessary, or that a rule is not longer valid or applicable. Rules will also be combined or reduced for simplification and clarity when feasible. Readopted rules will be noted in the *Texas Register* Rules Review section without publication of the text. Any proposed amendments or repeal of a rule or chapter as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption or repeal.

TREC invites comments during the review process for 30 days following the publication of this notice in the *Texas Register*. Any questions or comments pertaining to this notice of intention to review should be directed to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 or e-mail to [general.counsel@trec.state.tx.us](mailto:general.counsel@trec.state.tx.us) within 30 days of publication.

TRD-200701557

Loretta R. DeHay

General Counsel

Texas Real Estate Commission

Filed: April 24, 2007



# TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 7 TAC §3.37

**First determine the bank's assessable asset group, then:**

Steps	Assessment Calculation:	Assessable Asset Group				
1	For assessable assets of at least (in thousands)	\$0	\$10,000	\$25,000	\$40,000	\$70,000
	But not greater than (in thousands)	\$10,000	\$25,000	\$40,000	\$70,000	\$100,000
2	Take the total assessable assets over (in thousands):	\$0	\$10,000	\$25,000	\$40,000	\$70,000
3	And multiply by this factor:	0.705	0.400	0.190	0.186	0.180
4	Add this result to the base assessment amount of:	\$2,500	\$9,550	\$15,551	\$18,395	\$23,975
5	And multiply the total by the percentage corresponding to the bank's examination frequency factor to get the assessment:	As Per Supervisory Memorandum 1003				
	6-month frequency	200%	200%	200%	200%	200%
	12-month frequency	100%	100%	100%	100%	100%
	18-month frequency	87.5%	87.5%	87.5%	87.5%	87.5%
Steps	Assessment Calculation:	Assessable Asset Group				
1	For assessable assets of at least (in thousands)	\$100,000	\$250,000	\$1,000,000	\$5,000,000	\$10,000,000
	But not greater than (in thousands)	\$250,000	\$1,000,000	\$5,000,000	\$10,000,000	-----
2	Take the total assessable assets over (in thousands):	\$100,000	\$250,000	\$1,000,000	\$5,000,000	\$10,000,000
3	And multiply by this factor:	0.110	0.074	0.066	0.060	0.048
4	Add this result to the base assessment amount of:	\$29,375	\$45,935	\$101,735	\$365,735	\$664,485
5	And multiply the total by the percentage corresponding to the bank's examination frequency factor to get the assessment:	As Per Supervisory Memorandum 1003				
	6-month frequency	200%	200%	200%	200%	200%
	12-month frequency	100%	100%	100%	100%	100%
	18-month frequency	87.5%	87.5% [NA]	NA	NA	NA



# IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

## Texas State Affordable Housing Corporation

### Notice of Public Hearing - Hearing Date Change

#### Regarding the Issuance of Bonds

The notice published in the April 27, 2007, issue of the *Texas Register* (32 TexReg 2379) regarding the hearing on the proposed issuance by the Texas State Affordable Housing Corporation (the "Issuer") of one or more series of revenue bonds (the "Bonds") to provide financing and refinancing for the acquisition of single family mortgages in the State of Texas, pursuant to its professional educators home loan program (the "Professional Educators Project") published the incorrect date of the hearing. The hearing will take place on May 18, 2007 at 12:00 p.m., not May 7, 2007. Please find the corrected notice below.

Notice is hereby given of a public hearing to be held by the Texas State Affordable Housing Corporation (the "Issuer") at 12:00 p.m. on May 18, 2007 at 1005 Congress Avenue, Suite 500 (Conference Room), Austin, Texas 78701, on the proposed issuance by the Issuer of one or more series of revenue bonds (the "Bonds") to provide financing and refinancing for the acquisition of single family mortgages in the State of Texas, pursuant to its professional educators home loan program (the "Professional Educators Project"). The maximum aggregate face amount of the Bonds to be issued with respect to the Professional Educators Project is \$39,563,000. All interested persons are invited to attend the public hearing to express orally, or in writing, their views on the Professional Educators Project and the issuance of the Bonds. The Bonds shall not constitute or create an indebtedness, general or specific, or liability of the State of Texas, or any political subdivision thereof. The Bonds shall never constitute or create a charge against the credit or taxing power of the State of Texas, or any political subdivision thereof. Neither the State of Texas, nor any political subdivision thereof shall in any manner be liable for the payment of the principal of or interest on the Bonds or for the performance of any agreement or pledge of any kind which may be undertaken by the Issuer and no breach by the Issuer of any agreements will create any obligation upon the State of Texas, or any political subdivision thereof. Further information with respect to the proposed Bonds will be available at the hearing or upon written request prior thereto addressed to David Long at the Texas State Affordable Housing Corporation, 1005 Congress Avenue, Suite 500, Austin, Texas 78701; 1-888-638-3555 ext. 402.

Individuals who require auxiliary aids in order to attend this meeting should contact Laura Ross, ADA Responsible Employee, at 1-888-638-3555, ext. 400 through Relay Texas at 1-800-735-2989 at least two days before the meeting so that appropriate arrangements can be made.

Individuals may transmit written testimony or comments regarding the subject matter of this public hearing to David Long at [dlong@tsahc.org](mailto:dlong@tsahc.org).

TRD-200701549

David Long

President

Texas State Affordable Housing Corporation

Filed: April 24, 2007

## Office of the Attorney General

### Request for Applications (RFA) for the Sexual Assault Prevention and Crisis Services (SAPCS-Federal) Program

The Crime Victim Services Division (CVSD) of the Office of the Attorney General (OAG) is soliciting local and statewide applications from programs that wish to utilize SAPCS-Federal funds for projects that support the primary prevention of sexual assault or sexual violence.

**Applicable Funding Source:** The source of federal funds includes the Federal Department of Health and Human Services, Preventative Health and Health Services Block Grant, Catalog of Federal Domestic Assistance (CFDA) Number 93.991 and Injury Prevention and Control Research and State and Community Based Programs, CFDA Number 93.136. The federal funds are used for grant contracts supporting the prevention of sexual assault or sexual violence. All funding is contingent upon the appropriation of funds by the United States Congress and the Texas Legislature. The OAG makes no commitment that an application, once submitted, or a grant, once funded, will receive subsequent funding.

#### Eligibility Requirements:

**Eligible Applicants:** Local units of government, excluding law enforcement agencies and prosecutor's offices; non-profit agencies with 26.U.S.C. 501 (c)(3) status; and state agencies are eligible to apply for an SAPCS-Federal grant.

**Local Programs:** Eligible local programs must meet the local program eligibility requirements for an SAPCS-State grant which means the local program must offer the following minimum services for at least nine months prior to receiving an SAPCS grant contract: 24-hour crisis hotline; crisis intervention; public education; advocacy and accompaniment to hospitals, law enforcement offices, prosecutor offices, and courts for survivors and their family members; and crisis intervention volunteer training.

**Statewide Program:** A statewide program, to be eligible for special project funding, must show that it supports efforts to maintain or expand existing services offered by local sexual assault programs; improve services to survivors; or other activities consistent with Texas Government Code, Chapter 420.

**Eligibility:** The OAG will initially screen each application for eligibility. Applications will be deemed ineligible if the application is submitted by an ineligible applicant; the application is not filed in the manner and form required by the RFA; the application is filed after the deadline established in the RFA; or the application does not meet other requirements as stated in the RFA and the Application Kit.

**How to Obtain Application Kit:** The OAG will post the Application Kit on the OAG's official agency website at <http://www.oag.state.tx.us/victims/grants2008.shtml>. Updates and other helpful reminders about the application process will also be posted at this location. Potential applicants are encouraged to refer to this site regularly.

#### Deadlines and Filing Instructions for the Grant Application:

**Deadline:** The applicant must submit its application, including all required attachments, to the OAG; and the OAG must receive the submitted application and all required attachments by 5:00 p.m. CST, June 15, 2007 to be considered timely filed.

**Filing Instructions:** To meet the deadline, the Applicant must submit both paper (hard copies) and electronic (e-mail) documents. An Application will be considered filed when the OAG receives the paper (hard copies) and the electronic (e-mail) Application in the following ways by the required deadline:

**(1) Paper (hard copies) - Via Next Day Air Overnight delivery service (Federal Express, United Parcel Service, DHL, or Lone Star):**

The Applicant must submit one original and three hard copies of the complete Application (Excel workbook and all attachments).

The complete Application (Excel workbook and all attachments) must be sent to the following address:

**CVS Grants Applications-MC 005**

**Office of the Attorney General**

**300 W 15TH ST RM 102**

**Austin, TX 78701-1649**

The original and three hard copies must be received by 5:00 p.m. CST on June 15, 2007.

**(2) Electronic - Via e-mail:**

The Applicant must submit the Excel workbook.

The Excel workbook must be sent to the following e-mail address: [CVSGrantsApplications@oag.state.tx.us](mailto:CVSGrantsApplications@oag.state.tx.us).

The e-mail must be received by 5:00 p.m. CST on June 15, 2007.

The OAG will **not** consider an Application if it is not filed by the due date, 5:00 p.m. CST on June 15, 2007.

**Minimum and Maximum Amounts of Funding Available:** The minimum amount of funding all programs may apply for is \$20,000 per fiscal year. The maximum amounts of funding are as follows: new programs--\$25,000 per fiscal year; currently funded programs--\$100,000 per fiscal year; and statewide programs--\$300,000 per fiscal year.

Regardless of the maximums stated above, a program may not apply, per fiscal year, for an amount higher than the SAPCS-Federal funds it received in FY07. The amount of an award is determined solely by the OAG. The OAG may award grants at amounts above or below the established funding levels and is not obligated to fund a grant at the amount requested.

**Start Date and Length of Grant Contract Period:** The grant contract period (term) is up to two years from September 1, 2007 through August 31, 2009, subject to and contingent on funding and/or approval by the OAG.

**No Match Requirements:** There are no match requirements for SAPCS-Federal projects.

**Volunteer Requirements:** All SAPCS-Federal projects must have a volunteer component. Specific requirements for the volunteer component will be stated in the Application Kit.

**Award Criteria:** The OAG will make funding decisions that support the efficient and effective use of public funds. Scoring components will include, but are not limited to, information provided by the applicant on the proposed project activities and budget.

**SAPCS Purpose Area:** The purpose of the SAPCS-Federal program is to fund strategies and activities that support the primary prevention

of sexual assault or sexual violence and any other purposes consistent with Texas Government Code, Chapter 420.

**Staffing:** The funding priority for the SAPCS-Federal program is to support positions that work towards the development and implementation of primary prevention strategies and activities. All SAPCS-Federal projects must:

(a) Include a minimum of 75% of an applicant's budget in the personnel and fringe budget categories.

(b) Designate and request funding for a Primary Prevention Coordinator that is responsible for the development and implementation of primary prevention strategies and activities. This position must, at a minimum, work 20 hours per week on primary prevention activities.

In addition, only those staff positions that are directly related to achieving the goals of this project will be funded (this includes staff that has direct involvement in the planning, implementation, or delivery of project activities and those who directly supervise such staff).

**Preference:** The OAG reserves the right to consider all other appropriations or funding an applicant currently receives when making funding decisions. The OAG may give priority to applicants that do not receive other sources of funding, including funding that originates from the Texas Compensation to Victims of Crime Fund. The OAG reserves the right to give priority to programs that provide services in certain geographic or programmatic areas.

**Prohibitions on Use of Grant Funds:** OAG grant funds may not be used to support or pay the costs of overtime, dues, or lobbying; any portion of the salary or any other compensation for an elected government official; the purchase of food and beverages except as allowed under Texas State Travel Guidelines; the purchase or lease of vehicles; the purchase of promotional items or recreational activities; costs of travel that are unrelated to the direct delivery of services that support the OAG funded program; the costs for consultants or vendors who participate directly in writing a grant application; or for any unallowable costs set forth in applicable state or federal law, rules, regulations, guidelines, policies, procedures, or cost principles. Grant funds may not be used to purchase any other products or services the OAG identifies as inappropriate or unallowable within this RFA or the Application Kit. Additional prohibitions include, but are not limited to, using grant funds for: construction and/or renovation; development of major software applications; direct counseling, treatment, or advocacy services to victims or perpetrators of sexual violence; media or awareness campaigns that exclusively promote awareness of where to receive victim services; research; and out-of-state travel for local programs.

**OAG Contact Person:** If additional information is needed, contact Madeline Enriquez at [CVSGrantsApplications@oag.state.tx.us](mailto:CVSGrantsApplications@oag.state.tx.us) or (512) 936-6397.

TRD-200701555

Stacey Napier

Deputy Attorney General

Office of the Attorney General

Filed: April 24, 2007



**Request for Applications (RFA) for the Sexual Assault Prevention and Crisis Services (SAPCS-State) Program**

The Crime Victim Services Division (CVSD) of the Office of the Attorney General (OAG) is soliciting local and statewide applications from programs that provide services to victims of sexual assault.

**Applicable Funding Source:** The source of state funds is a biennial appropriation by the Texas Legislature, these funds are constitutionally

dedicated. Texas Code of Criminal Procedure, Article 56.541(e) authorizes the OAG to use money appropriated from the Texas Compensation to Victims of Crime Fund for grant contracts supporting victim-related services or assistance. Additional funding comes from parole fees pursuant to Texas Code of Criminal Procedure, Article 42.12, Section 19(e) and Texas Government Code, Section 508.189. All funding is contingent upon an appropriation to the OAG by the Texas Legislature. The OAG makes no commitment that an application, once submitted, or a grant, once funded, will receive subsequent funding.

#### **Eligibility Requirements:**

*Eligible Applicants:* Local units of government, excluding law enforcement agencies and prosecutor's offices; non-profit agencies with 26.U.S.C. 501(c)(3) status; and state agencies are eligible to apply for a SAPCS-State grant.

*Local Programs:* A local program must offer the following minimum services for at least nine months prior to receiving a SAPCS-State grant contract: 24-hour crisis hotline; crisis intervention; public education; advocacy and accompaniment to hospitals, law enforcement offices, prosecutor offices, and courts for survivors and their family members; and crisis intervention volunteer training.

*Statewide Program:* A statewide program, to be eligible for special project funding, must show that it supports efforts to maintain or expand existing services offered by local sexual assault programs; improve services to survivors; or other activities consistent with Texas Government Code, Chapter 420.

*Eligibility:* The OAG will initially screen each application for eligibility. Applications will be deemed ineligible if the application is submitted by an ineligible applicant; the application is not filed in the manner and form required by the RFA; the application is filed after the deadline established in the RFA; or the application does not meet other requirements as stated in the RFA and the Application Kit.

**How to Obtain Application Kit:** The OAG will post the Application Kit on the OAG's official agency website at <http://www.oag.state.tx.us/victims/grants2008.shtml>. Updates and other helpful reminders about the application process will also be posted at this location. Potential applicants are encouraged to refer to this site regularly.

#### **Deadlines and Filing Instructions for the Grant Application:**

*Deadline:* The applicant must submit its application, including all required attachments, to the OAG and the OAG must receive the submitted application and all required attachments by 5:00 p.m. CST June 15, 2007 to be considered timely filed.

*Filing Instructions:* **To meet the deadline, the Applicant must submit both paper (hard copies) and electronic (email) documents.** An Application will be considered filed when the OAG receives the paper (hard copies) and the electronic (email) Application in the following ways by the required deadline:

#### **(1) Paper (hard copies) - Via Next Day Air Overnight delivery service (Federal Express, United Parcel Service, DHL or Lone Star):**

The Applicant must submit one original and three hard copies of the complete Application (Excel workbook and all attachments).

The complete Application (Excel workbook and all attachments) must be sent to the following address:

**CVS GRANTS APPLICATIONS-MC 005  
OFFICE OF THE ATTORNEY GENERAL  
300 W 15TH ST RM 102**

#### **AUSTIN, TX 78701-1649**

The original and three hard copies must be received by 5:00 p.m. CST on June 15, 2007.

#### **(2) Electronic - Via email:**

The Applicant must submit the Excel workbook.

The Excel workbook must be sent to the following email address: [CVS-GrantsApplications@oag.state.tx.us](mailto:CVS-GrantsApplications@oag.state.tx.us).

The email must be received by 5:00 p.m. CST on June 15, 2007.

The OAG will **not** consider an Application if it is not filed by the due date, 5:00 pm CST on June 15, 2007.

**Minimum and Maximum Amounts of Funding Available:** The minimum amount of funding all programs may apply for is \$20,000 per fiscal year. The maximum amounts of funding are as follows: new programs - \$30,000 per fiscal year; currently funded programs - \$200,000 per fiscal year; and statewide programs - \$300,000 per fiscal year.

Regardless of the maximums stated above, a program may not apply, per fiscal year, for an amount higher than the SAPCS-State funds it received in FY07. The amount of an award is determined solely by the OAG. The OAG may award grants at amounts above or below the established funding levels and is not obligated to fund a grant at the amount requested.

**Start Date and Length of Grant Contract Period:** The grant contract period (term) is up to two years from September 1, 2007 through August 31, 2009, subject to and contingent on funding and/or approval by the OAG.

**No Match Requirements:** There are no match requirements for SAPCS-State projects.

**Volunteer Requirements:** All SAPCS-State projects must have a volunteer component. Specific requirements for the volunteer component will be stated in the Application Kit.

**Award Criteria:** The OAG will make funding decisions that support the efficient and effective use of public funds. Scoring components will include, but are not limited to, information provided by the applicant on the proposed project activities and budget.

**SAPCS Purpose Area:** The purpose of the SAPCS-State program is to maintain or expand the existing services of local sexual assault programs and any other purposes consistent with Texas Government Code, Chapter 420.

**Staffing:** All SAPCS-State projects must:

(a) Include one direct service staff person working at least 20 hours per week or two direct service staff persons working at least 10 hours each per week in the applicant's budget.

(b) Include a minimum of 75% of an applicant's budget in the personnel and fringe budget categories.

In addition, an applicant may not include more than three administrative positions, providing administrative support to the SAPCS-State project.

**Preference:** The OAG reserves the right to consider all other appropriations or funding an applicant currently receives when making funding decisions. The OAG may give priority to applicants that do not receive other sources of funding, including funding that originates from the Texas Compensation to Victims of Crime Fund. The OAG reserves the right to give priority to programs that provide services in certain geographic or programmatic areas.

**Prohibitions on Use of Grant Funds:** OAG grant funds may not be used to support or pay the costs of overtime, dues, or lobbying; any portion of the salary or any other compensation for an elected government official; the purchase of food and beverages except as allowed under Texas State Travel Guidelines; the purchase or lease of vehicles; the purchase of promotional items or recreational activities; out of state travel or costs of travel that are unrelated to the direct delivery of services that support the OAG funded program; the costs for consultants or vendors who participate directly in writing a grant application; or for any unallowable costs set forth in applicable state or federal law, rules, regulations, guidelines, policies, procedures or cost principles. Grant funds may not be used to purchase any other products or services the OAG identifies as inappropriate or unallowable within this RFA or the Application Kit.

**OAG Contact Person:** If additional information is needed, contact Madeline Enriquez at CVSGrantsApplications@oag.state.tx.us or (512) 936-6397.

TRD-200701563

Stacey Napier

Deputy Attorney General

Office of the Attorney General

Filed: April 25, 2007

## Texas Building and Procurement Commission

### Request for Proposal

The Texas Building and Procurement Commission (TBPC), on behalf of the Office of the Attorney General, announces the issuance of Request for Proposals (RFP) #303-7-11579. TBPC seeks a 5-year lease of approximately 9,358 square feet of office space in the Houston area, Harris County, Texas. Location of client service office shall be within the following zip codes--77084, 77043, 77080, 77040, 77041, 77064, 77065, and 77095.

The deadline for questions is May 4, 2007; and the deadline for proposals is May 15, 2007 at 3:00 p.m. The award date is June 1, 2007. TBPC reserves the right to accept or reject any or all proposals submitted. TBPC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TBPC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TBPC Purchaser Myra Beer at (512) 463-5773. A copy of the RFP may be downloaded from the *Electronic State Business Daily* at [http://esbd.tbpc.state.tx.us/1380/bid\\_show.cfm?bidid=70239](http://esbd.tbpc.state.tx.us/1380/bid_show.cfm?bidid=70239).

TRD-200701534

Ingrid K. Hansen

General Counsel

Texas Building and Procurement Commission

Filed: April 23, 2007

### Request for Proposal

The Texas Building and Procurement Commission (TBPC), on behalf of the Department of Family and Protective Services, announces the issuance of Request for Proposals (RFP) #303-7-11583. TBPC seeks either a 5-year lease or a 10-year lease of approximately 17,144 square feet of office space in the Austin area, Travis County, Texas.

The deadline for questions is May 4, 2007; and the deadline for proposals is May 21, 2007 at 3:00 p.m. The award date is June 1, 2007.

TBPC reserves the right to accept or reject any or all proposals submitted. TBPC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TBPC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TBPC Purchaser Myra Beer at (512) 463-5773. A copy of the RFP may be downloaded from the *Electronic State Business Daily* at [http://esbd.tbpc.state.tx.us/1380/bid\\_show.cfm?bidid=70299](http://esbd.tbpc.state.tx.us/1380/bid_show.cfm?bidid=70299).

TRD-200701535

Ingrid K. Hansen

General Counsel

Texas Building and Procurement Commission

Filed: April 23, 2007

## Coastal Coordination Council

### Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of April 13, 2007, through April 19, 2007. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on April 25, 2007. The public comment period for these projects will close at 5:00 p.m. on May 25, 2007.

#### FEDERAL AGENCY ACTIONS:

**Applicant: Zimmerman Brothers, Inc.;** Location: The project is located on the west shoreline of Laguna Madre, north of the Queen Isabel Hotel, on frontage that spans from 200 feet to 500 feet southeast of the Queen Isabella Causeway, Port Isabel, Cameron County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Port Isabel, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 679541; Northing: 2885342. Project Description: The applicant is requesting after-the-fact authorization for the placement of 30 pilings, 10 rows of three, and the placement of five piles of broken concrete riprap that total approximately 750 square feet. The pilings and riprap have reportedly been placed for decorative purposes in association with a restaurant called Pelican Station. The pilings and riprap are intended to provide a perch for pelicans, while the pilings are also intended to replicate the theme of a former railroad trestle that extended 1,000 feet into Laguna Madre to service South Padre Island. CCC Project No.: 07-0167-F1; Type of Application: U.S.A.C.E. permit application #24441 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act (33 U.S.C.A. §1344).

**Applicant: Option 1 Realty Group;** Location: The project is located adjacent to the Laguna Madre and between 201 West Capricorn Drive and 200 West Constellation Drive in the Town of South Padre Island,

Cameron County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Port Isabel, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 682900; Northing: 2890500. Project Description: The applicant proposes to construct an approximate 0.148-acre amenity area containing a swimming pool, cabana structure, patio areas and a parking area adjacent to the Laguna Madre. The area would be for the use of the Laguna Bay Condominium owners and guests. The construction of the area would require the installation of 160 linear feet of fiberglass bulkhead and the placement of 960 cubic yards of fill material. Approximately 0.132 acre of waters of the United States, including wetlands, would be filled, including 0.017 acre of saltwater coastal flat and 0.115 acre of mangrove wetlands. No mitigation is proposed. CCC Project No.: 07-0169-F1; Type of Application: U.S.A.C.E. permit application #SWG-2007-0506 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Tammy Brooks, Consistency Review Coordinator, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200701556

Larry L. Laine

Chief Clerk/Deputy Land Commissioner, General Land Office  
Coastal Coordination Council

Filed: April 24, 2007

## Concho Valley Workforce Development Board

### Request for Proposal

The Concho Valley Workforce Development Board (CVWDB) is seeking qualified parties to submit proposals for staffing and management of its workforce center (Workforce Solutions), incorporating at a minimum Childcare Services, Workforce Investment Act (WIA) programs, Choices/Temporary Assistance to Needy Families (TANF), Food Stamp Employment and Training (FSE&T) and Reintegration of Offenders (RIO).

Interested parties may obtain a copy of the RFP by sending a request to Cathy Ballard via facsimile (325) 482-8900 or e-mail rfp@cvworkforce.org. Proposals will be accepted until 5:00 p.m. CDST, June 19, 2007, at the office of CVWDB, 36 East Twohig, Suite 805, San Angelo, TX 76903.

A conference will be held on May 18, 2007, at 9:30 a.m. at Workforce Solutions, 202 Henry O. Flipper, San Angelo, TX 76903, Room 103, to answer questions for any party interested in submitting a Proposal.

CVWDB reserves the right to accept or reject any or all proposals. The RFP will be released on request beginning May 7, 2007 at 9:00 a.m. CDST.

TRD-200701565

Johnny Griffin

Executive Director

Concho Valley Workforce Development Board

Filed: April 25, 2007

## Office of Consumer Credit Commissioner

### Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 04/30/07 - 05/06/07 is 18% for Consumer<sup>1</sup>/Agricultural/Commercial<sup>2</sup>/credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 04/30/07 - 05/06/07 is 18% for Commercial over \$250,000.

<sup>1</sup>Credit for personal, family or household use.

<sup>2</sup>Credit for business, commercial, investment or other similar purpose.

TRD-200701537

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: April 24, 2007

## Texas Commission on Environmental Quality

### Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **June 4, 2007**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on June 4, 2007**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: 6700 McHard, Inc. dba Greater Houston Gun Club; DOCKET NUMBER: 2007-0054-PWS-E; IDENTIFIER: RN101219939; LOCATION: Fort Bend County, Texas; TYPE OF FACILITY: recreational area with a public water supply; RULE VIOLATED: 30 Texas Administrative Code (TAC) §290.109(c)(2)(A)(i) and §290.122(c)(2)(B), and Texas Health & Safety Code (THSC), §341.033(d), by failing to perform routine monthly bacteriological sampling and by failing to provide public notification of the failure to conduct bacteriological sampling; PENALTY: \$6,020; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (210) 490-3096; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: City of Brenham; DOCKET NUMBER: 2004-0114-MLM-E; IDENTIFIER: RN101721355 and RN101386662; LOCATION: Brenham, Washington County, Texas; TYPE OF FACILITY: wastewater treatment and public water supply; RULE VIOLATED: 30 TAC §315.1, Texas Pollutant Discharge Elimination System (TPDES) Permit Number 10388-001, Contributing Industries and Pretreatment Requirements Section, Item (1)(a), and 40 Code of Federal Regulations (CFR) §403.12(i)(1) and (2) and §403.8(f)(2)(i) and (6), by failing to update a list of the city's industrial users (IUs), including their names and addresses, or a list of deletions and additions and by failing to identify and locate all possible IUs within jurisdictions discharging to the publicly owned treatment works and make the compilation, index, or inventory available to the approved authority upon demand; 30 TAC §315.1, TPDES Permit Number 10388-001, Contributing Industries and Pretreatment Requirements Section, Item (1)(c), and 40 CFR §403.8(f)(2) and (6), by failing to develop and implement procedures to ensure compliance with the requirements of a pretreatment program; 30 TAC §315.1, TPDES Permit Number 10388-001, Contributing Industries and Pretreatment Programs, Item (1)(d), and 40 CFR §403.6(e) and §403.8(f)(1)(iii)(C) and (D), by issuing a permit which did not accurately reflect the applicable categorical pretreatment standards for Outfall 002 and 003; 30 TAC §315.1, TPDES Permit Number 10388-001, Contributing Industries and Pretreatment Requirements, Item (1)(b), and 40 CFR §403.8(f)(2)(v), by failing to randomly inspect, sample, and analyze the effluent from IUs and conduct surveillance activities; 30 TAC §315.1, TPDES Permit Number 10388-001, Contributing Industries and Pretreatment Requirements, Item (1)(b), and 40 CFR §403.8(f)(2)(iv), by failing to receive and analyze self monitoring reports and other notices submitted by IUs; 30 TAC §315.1, TPDES Permit Number 10388-001, Contributing Industries and Pretreatment Requirements, Item (1)(b), and 40 CFR §403.8(f)(2)(vi), by failing to receive and analyze the required reports for completeness and accuracy and collect information with sufficient care to produce evidence admissible in enforcement proceedings or in judicial actions; 30 TAC §315.1, TPDES Permit Number 10388-001, Contributing Industries and Pretreatment Requirements, Item (1)(c), and 40 CFR §403.8(f)(5), by failing to enforce their enforcement response plan; 30 TAC §305.125(1), TPDES Permit Number 10388-001, Interim II Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with certain limits at outfall 001; 30 TAC §290.45(b)(2)(A) and (e) and THSC, §341.0315(c), by failing to meet the agency's minimum water systems capacity requirement of 0.6 gallons per minute; 30 TAC §290.41(e)(2)(C), by failing to properly mark the 200-foot restricted zone surrounding the raw water intake; 30 TAC §290.42(d)(6)(C) and (d)(6)(E)(ii), by failing to label all chemical bulk storage facilities and day tanks and by failing to provide adequate containment facilities for all liquid chemical storage tanks; 30 TAC §290.43(e), by failing to provide an intruder-resistant fence; and 30 TAC §290.42(e)(4)(B), by failing to properly house disinfection equipment; PENALTY: \$44,150; Supplemental Environmental Project (SEP) offset amount of \$44,150 applied to Texas Association of Resource Conservation

and Development Areas, Inc. (RC&D) - Household Hazardous Waste Clean-Up; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(3) COMPANY: Camp For All Foundation; DOCKET NUMBER: 2005-1041-MWD-E; IDENTIFIER: RN102080660; LOCATION: Burton, Washington County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0013838001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with permitted effluent limitations; PENALTY: \$3,240; Supplemental Environmental Project (SEP) offset amount of \$2,592 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Wastewater Treatment Assistance; ENFORCEMENT COORDINATOR: Laurie Eaves, (512) 239-4495; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(4) COMPANY: City of Dumas; DOCKET NUMBER: 2006-2254-MWD-E; IDENTIFIER: RN101921005; LOCATION: Moore County, Texas; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §305.125(11)(B) and (C), Permit Number WQ0010161001, Sludge Provisions, Section III, G. Reporting Requirements, by failing to submit the annual sludge disposal report; and 30 TAC §305.125(4) and (5) and the Code, §26.121(a), by failing to prevent an unauthorized discharge from the final treatment/holding pond; PENALTY: \$2,704; Supplemental Environmental Project (SEP) offset amount of \$2,164 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Unauthorized Trash Dump Clean-Up; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(5) COMPANY: City of Granbury; DOCKET NUMBER: 2006-2227-PWS-E; IDENTIFIER: RN102690971; LOCATION: Granbury, Hood County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.42(k) and (l), by failing to keep a thorough plant operations manual; 30 TAC §290.41(c)(3)(A) and §290.46(n)(3), by failing to maintain copies of well completion data; 30 TAC §290.46(m), by failing to maintain the public water system to ensure the good working condition and general appearance of the system's facilities and equipment; 30 TAC §290.42(d)(6) and (f)(1)(E)(ii), by failing to provide adequate containment facilities for liquid chemical storage tanks; 30 TAC §290.42(d)(11)(C), by failing to maintain the condition of the filter media to prevent cracking and separation; the Code, §26.121(a)(1), by failing to prevent the unauthorized discharge of municipal waste; 30 TAC §290.46(f)(3)(E)(iv), by failing to provide copies and maintain records of the dates dead-end mains were flushed; 30 TAC §290.39(j), by failing to provide a copy of the TCEQ plan construction approval letters for the Airport Well and the Meander Well pump stations; 30 TAC §290.46(m)(4), by failing to maintain all water treatment units, storage and pressure maintenance facilities, distribution system lines, and related appurtenances in a watertight condition; 30 TAC §290.42(d)(2), by failing to maintain plant piping in a watertight condition to prevent leaks; 30 TAC §290.41(c)(3)(O), by failing to maintain the intruder-resistant fence; 30 TAC §290.41(c)(3)(N), by failing to have an operational flow meter on the well; and 30 TAC §290.41(c)(3)(J), by failing to provide a concrete sealing block that extends at least three feet from the exterior well casing in all directions; PENALTY: \$6,960; Supplemental Environmental Project (SEP) offset amount of \$6,960 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Wastewater Treatment Assistance; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: Gulf Coast Trades Center; DOCKET NUMBER: 2006-0480-MWD-E; IDENTIFIER: RN102956364; LOCATION: Walker County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and §305.126(a) and TPDES Permit Number 12159001, Operational Requirements Number 8.a., by failing to initiate engineering and financial planning for an expansion and/or upgrade of the wastewater treatment plant or collection system; 30 TAC §305.125(1) and §312.46(a)(1) and TPDES Permit Number 12159001, Sludge Provisions, by failing to conduct the required sludge monitoring of metals and fecal coliform bacteria; 30 TAC §305.125(1) and TPDES Permit Number 12159001, Sludge Provisions, by failing to submit the 2003, 2004, and 2005 annual sludge reports; and 30 TAC §305.125(1), TPDES Permit Number 12159001, Effluent Limitations and Monitoring Requirements Number 2, and the Code, §26.121(a), by failing to maintain compliance with the maximum total chlorine residual limit of four milligrams per liter; PENALTY: \$6,985; Supplemental Environmental Project (SEP) offset amount of \$5,588 applied to performing an endangered species habitat restoration project in the Sam Houston National Forest; ENFORCEMENT COORDINATOR: Catherine Albrecht, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7) COMPANY: Maganbhai R. Patel, Bhagubhai B. Patel, Vinubhai B. Patel, and Laxmiben L. Patel dba Holiday Motel; DOCKET NUMBER: 2007-0027-MWD-E; IDENTIFIER: RN101518843; LOCATION: Liberty County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 12161001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with the permit effluent limits; 30 TAC §305.125(1) and §319.1 and TPDES Permit Number 12161001, Monitoring and Reporting Requirements Number 1, by failing to submit monitoring results at the interval specified in the permit; 30 TAC §305.125(1) and §319.1 and TPDES Permit Number 12161001, Monitoring and Reporting Requirements Number 1 and Sludge Provisions I.C., II.F., and III.G, by failing to submit monitoring results at the interval specified in the permit; PENALTY: \$13,875; ENFORCEMENT COORDINATOR: Catherine Albrecht, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(8) COMPANY: Randle D. Howard dba Howard Construction Fill Site and D&KW Family, L.P.; DOCKET NUMBER: 2007-0033-MLM-E; IDENTIFIER: RN105076251; LOCATION: Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: unauthorized waste site; RULE VIOLATED: 30 TAC §330.15(c) and §335.4, by failing to obtain authorization for disposal of nonhazardous industrial and municipal solid waste; PENALTY: \$2,000; ENFORCEMENT COORDINATOR: Alison Echlin, (512) 239-3308; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: J & C Construction, Inc.; DOCKET NUMBER: 2007-0150-MSW-E; IDENTIFIER: RN105126585; LOCATION: Mission, Hidalgo County, Texas; TYPE OF FACILITY: construction business; RULE VIOLATED: 30 TAC §330.15(c) and §330.103(b), by failing to prevent the transportation and disposal of municipal solid waste at an unauthorized solid waste landfill site; PENALTY: \$1,000; ENFORCEMENT COORDINATOR: Libby Hogue, (512) 239-1165; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(10) COMPANY: Johnson County Fresh Water Supply District No. 1; DOCKET NUMBER: 2007-0213-MWD-E; IDENTIFIER: RN101992089; LOCATION: Joshua, Johnson County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 14350001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with

the permitted limits for ammonia nitrogen and total suspended solids; PENALTY: \$4,445; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(11) COMPANY: Kinder Morgan Petcoke GP LLC; DOCKET NUMBER: 2007-0142-MLM-E; IDENTIFIER: RN102206349; LOCATION: Port Arthur, Jefferson County, Texas; TYPE OF FACILITY: marine cargo handling operation; RULE VIOLATED: 30 TAC §101.4 and THSC, §382.085(a) and (b), by failing to prevent a nuisance condition; 30 TAC §116.115(c), Permit Number 9273, Special Condition Number 3, and THSC, §382.085(a), by failing to prevent emissions from impacting off-site receptors; and the Code, §26.121(a), by failing to prevent unauthorized discharge of soda ash; PENALTY: \$3,675; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(12) COMPANY: Martinek Construction, Inc.; DOCKET NUMBER: 2007-0218-WQ-E; IDENTIFIER: RN105150668; LOCATION: Ovilla, Ellis County, Texas; TYPE OF FACILITY: single family home construction business; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to develop and implement a storm water prevention plan and obtain permit authorization to discharge storm water at a construction site; PENALTY: \$1,800; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(13) COMPANY: Tommy Christopher Moore; DOCKET NUMBER: 2007-0216-LII-E; IDENTIFIER: RN105120828; LOCATION: Boerne, Bexar County, Texas; TYPE OF FACILITY: landscape business; RULE VIOLATED: 30 TAC §30.5(a) and (b) and §344.4(a), Texas Occupations Code, §1903.251, and the Code, §37.003, by failing to obtain an irrigator license from the commission prior to selling, designing, consulting, installing, maintaining, altering, repairing, or servicing an irrigation system; PENALTY: \$250; ENFORCEMENT COORDINATOR: Libby Hogue, (512) 239-1165; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(14) COMPANY: Pedro Sandate; DOCKET NUMBER: 2007-0059-LII-E; IDENTIFIER: RN103591848; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: landscape business; RULE VIOLATED: 30 TAC §30.5(a) and §344.4(a), Texas Occupations Code, §1903.251, and the Code, §37.003, by failing to hold an irrigator license prior to selling, designing, consulting, installing, maintaining, altering, repairing, or servicing an irrigation system and to represent to the public that he/she could perform a service for which a license is required; PENALTY: \$625; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(15) COMPANY: City of Penelope; DOCKET NUMBER: 2005-0549-MWD-E; IDENTIFIER: RN101523066, TPDES Permit Number 13621001; LOCATION: Penelope, Hill County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0013621001, Final Effluent Limitations and Monitoring Requirements, and the Code, §26.121(a), by failing to maintain compliance with the permitted effluent limits; PENALTY: \$7,000; Supplemental Environmental Project (SEP) offset amount of \$5,600 applied to holding a one-day community-wide waste tire collection event in which residents will be allowed to bring tires to a drop-off location for proper disposal; ENFORCEMENT COORDINATOR: Sandy VanCleave, (512) 239-2670; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(16) COMPANY: Pirafzal Corporation dba Stop-N-Drive 7; DOCKET NUMBER: 2006-1927-PST-E; IDENTIFIER: RN101867992; LOCATION: Port Arthur, Jefferson County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II vapor space manifold and dynamic pressure performance; PENALTY: \$2,625; ENFORCEMENT COORDINATOR: Patricia Chawla, (512) 239-0739; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(17) COMPANY: The Goodyear Tire and Rubber Company; DOCKET NUMBER: 2007-0023-AIR-E; IDENTIFIER: RN102561925; LOCATION: Beaumont, Jefferson County, Texas; TYPE OF FACILITY: petrochemical manufacturing plant; RULE VIOLATED: 30 TAC §122.143(4) and §122.146(2), Federal Operating Permit (FOP) Number 1593, General Terms and Conditions (GT&C), and THSC, §382.085(b), by failing to submit the annual compliance certification; 30 TAC §§113.260, 116.115(c), and 122.143(4), Air Permit Numbers 1040, Special Condition (SC) 3, 9481, SC 5A, and 22110, SC 4A, FOP Number 1593, GT&C and SC 12A, and THSC, §382.085(b), by failing to operate a flare with a net heating value of 300 British thermal units per standard cubic foot or greater; 30 TAC §116.115(c) and §122.143(4), Air Permit Number 56473, SC 3, FOP Number 1593, GT&C and SC 12A, and THSC, §382.085(b), by failing to sample the main cooling tower daily; 30 TAC §§113.260, 116.115(c), and 122.143(4), 40 CFR §63.167(a)(1) and §63.502(a), Air Permit Numbers 9481, SC 7E, 22110, SC 5E, and 56473, SC 11E, FOP Number 1593, GT&C, SC 1D and 12A, and THSC, §382.085(b), by failing to seal open-ended lines containing hazardous air pollutants; 30 TAC §116.115(c) and §122.143(4), Air Permit Number 20040/PSD-TX-801, SC 7, FOP Number 1593, GT&C and SC 12A, and THSC, §382.085(b), by failing to maintain a permitted limit during a compliance test; 30 TAC §113.260 and §122.143(4), FOP Number 1593, GT&C and SC 1D, and THSC, §382.085(b), by failing to conduct quarterly sampling at a cooling tower; and 30 TAC §113.260 and §122.143(4), FOP Number 1593, GT&C and SC 1D, and THSC, §382.085(b), by failing to report a flare outage; PENALTY: \$102,564; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 490-3096; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(18) COMPANY: Dondi and Donna Tipton dba Tipton Texaco and Harvey and Beth Tipton dba Tipton Texaco; DOCKET NUMBER: 2007-0047-PST-E; IDENTIFIER: RN101723997; LOCATION: Timpson, Shelby County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.7(d)(3), by failing to provide written notice of any change or additional information to the commission; 30 TAC §334.49(a)(1) and the Code, §26.3475(d), by failing to provide corrosion protection for the underground storage tank (UST) system; and 30 TAC §334.22(a) and the Code, §5.702, by failing to pay outstanding UST fees and associated late fees; PENALTY: \$3,745; ENFORCEMENT COORDINATOR: Deana Holland, (512) 239-2504; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(19) COMPANY: Valero Refining-Texas, L.P.; DOCKET NUMBER: 2007-0131-AIR-E; IDENTIFIER: RN100211663; LOCATION: Corpus Christi, Nueces County, Texas; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §101.20(3) and §116.715(a), Air Permit Numbers PSD-TX-1023M1 and 2937, Special Condition 1, and THSC, §382.085(b), by failing to prevent an unauthorized emissions event; PENALTY: \$10,000; ENFORCEMENT COORDINATOR: Audra Ruble, (361) 825-3100; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(20) COMPANY: Valero Refining-Texas, L.P.; DOCKET NUMBER: 2007-0161-AIR-E; IDENTIFIER: RN100219310; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: oil refinery; RULE VIOLATED: 30 TAC §101.221(a) and §116.115(c), 40 CFR §60.18(c)(2), Air Permit 2501A, Special Condition 1 and 10B, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$38,000; Supplemental Environmental Project offset amount of \$19,000 applied to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: Kimberly Morales, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(21) COMPANY: Via Bayou, Inc.; DOCKET NUMBER: 2006-2196-MWD-E; IDENTIFIER: RN102887312; LOCATION: Galveston County, Texas; TYPE OF FACILITY: domestic wastewater system; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 14326001, Effluent Limitations and Monitoring Requirements Number 1 for Outfall 001A, and the Code, §26.121(a), by failing to comply with the permit effluent limits; PENALTY: \$9,150; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-200701545

Mary R. Risner

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: April 24, 2007



#### Notice of Availability of the Draft April 2007 Update to the Water Quality Management Plan for the State of Texas

The Texas Commission on Environmental Quality (TCEQ or commission) announces the availability of the draft April 2007 Update to the Water Quality Management Plan for the State of Texas (draft WQMP update).

The Water Quality Management Plan (WQMP) is developed and promulgated in accordance with the requirements of federal Clean Water Act, §208. The draft WQMP update includes projected effluent limits of indicated domestic dischargers useful for water quality management planning in future permit actions. Once the commission certifies a WQMP update, the update is submitted to the United States Environmental Protection Agency (EPA) for approval. For some Texas Pollutant Discharge Elimination System (TPDES) permits, the EPA's approval of a corresponding WQMP update is a necessary precondition to TPDES permit issuance by the commission. The draft WQMP update may contain service area populations for listed wastewater treatment facilities and designated management agency information.

A copy of the draft April 2007 WQMP update may be found on the commission's Web site located at [http://www.tceq.state.tx.us/nav/eq/eq\\_wqmp.html](http://www.tceq.state.tx.us/nav/eq/eq_wqmp.html). A copy of the draft may also be viewed at the TCEQ Library, Building A, 12100 Park 35 Circle, Austin, Texas.

Written comments on the draft WQMP update may be submitted to Nancy Vignali, Texas Commission on Environmental Quality, Water Quality Division, MC 150, P.O. Box 13087, Austin, Texas 78711-3087. Comments may also be faxed to (512) 239-4420, but must be followed up with the submission and receipt of the written comments within three working days of when they were faxed. Written comments must be submitted no later than 5:00 p.m. on June 4, 2007. For further information or questions, please contact Ms. Vignali at (512) 239-1303 or by e-mail at [nvignali@tceq.state.tx.us](mailto:nvignali@tceq.state.tx.us).



TRD-200701539  
Robert Martinez  
Director, Environmental Law Division  
Texas Commission on Environmental Quality  
Filed: April 24, 2007



### Notice of Water Quality Applications

The following notices were issued during the period of April 19, 2007.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to TCEQ, Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, **WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.**

Aqua Utilities, Inc. has applied for a renewal of TPDES Permit No. 11249-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 130,000 gallons per day. The facility is located approximately 1,000 feet northeast of West Port Arthur Road and immediately west of Viterbo Road in Jefferson County, Texas.

Aqua Water Supply Corporation has applied to the Texas Commission on Environmental Quality (TCEQ) for a major amendment to TPDES Permit No. WQ0014561001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 16,000 gallons per day to a daily average flow not to exceed 90,000 gallons per day. The proposed amendment requests to include a daily average flow not to exceed 45,000 gallons per day. The facility is located 750 feet south of U.S. Highway 290 from a point approximately 2.0 miles west of the intersection of U.S. Highway 290 and County Road 360, on the Dube Lane access road in Bastrop County, Texas.

Kenneth Hugh Burke, a campground and marina owner, has applied to the TCEQ for a renewal of Permit No. WQ0011435001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 12,000 gallons per day via surface irrigation of 20 acres of non-public access land. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located approximately 1 mile south of Farm-to-Market Road 356 and approximately 4 miles southeast of the intersection of Farm-to-Market Road 356 and State Highway 94 in Trinity County, Texas.

Cinco Municipal Utility District No. 1 has applied for a renewal of TPDES Permit No. 13172-002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 910,000 gallons per day. The facility is located approximately 1700 feet east of 6055 South Mason Road and approximately 0.75 mile north and 3 miles west of the intersection of Farm-to-Market 1093 and Farm-to-Market Road 1464 in Fort Bend County, Texas.

City of New London has applied for a renewal of TPDES Permit No. WQ0012376001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The facility is located approximately 7,500 feet northwest of the intersection of the State Highway 323 and Farm-to-Market Road 838 and approximately 5,000 feet east of Farm-to-Market Road 2089 in Rusk County, Texas.

The City of Saint Jo has applied for a renewal of TPDES Permit No. WQ0014496001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 150,000 gallons per day. The facility is located approximately one mile southeast of the City of Saint Jo and approximately 1,000 feet south of U.S. High-

way 82, on the north bank of the Elm Fork Trinity River in Montague County, Texas.

Dr. James Donald Smith, Jr. has applied for a renewal of TPDES Permit No. WQ0014498001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 35,000 gallons per day. The facility is located 2,211 feet south of State Highway 787 and approximately 4,800 feet east of the Community of Romayor in Liberty County, Texas.

City of Splendora has applied for a renewal of TPDES Permit No. WQ0013389-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 300,000 gallons per day. The facility is located approximately 2,000 feet north of Farm-to-Market Road 2090 on the east side of Cox Street and adjacent to the T. & N.O. Railroad in the City of Splendora in Montgomery County, Texas.

Texas H2O, Inc. has applied for a renewal of TPDES Permit No. WQ0013786001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 42,000 gallons per day. The facility is located adjacent to Lake Granbury, approximately two miles north of the intersection of Farm-to-Market Road 2425 and Farm-to-Market Road 3210 in Walters Bend in Hood County, Texas.

Westwood Water Supply Corporation has applied for a renewal of TPDES Permit No. WQ0011337001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 25,000 gallons per day. The facility is located approximately 4.5 miles north of the intersection of State Highway 63 and Farm-to-Market Road 255 adjacent to Sam Rayburn Reservoir and 15 miles northwest of the City of Jasper in Jasper County, Texas.

### INFORMATION SECTION

To view the complete issued notices, view the notices on our web site at [www.tceq.state.tx.us/comm\\_exec/cc/pub\\_notice.html](http://www.tceq.state.tx.us/comm_exec/cc/pub_notice.html) or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at [www.TCEQ.state.tx.us](http://www.TCEQ.state.tx.us). Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200701567  
LaDonna Castañuela  
Chief Clerk  
Texas Commission on Environmental Quality  
Filed: April 25, 2007



### Notice of Water Rights Applications

Notices issued April 18 through April 23, 2007.

APPLICATION NO. 12111; City of Longview, P.O. Box 1952, Longview, Texas 75606-1952 has applied for a Water Use Permit to rehabilitate and maintain an existing dam and reservoir on an unnamed tributary of the Sabine River, Sabine River Basin for in-place recreation purposes in Gregg County. The application was received on October 18, 2006. Additional information for the application was received on January 10, 2007 and February 23, 2007. The application was accepted for filing and declared administratively complete on March 5, 2007. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the

address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

APPLICATION NO. 12161; Fort Hood DPW, 4219 77th Street, Fort Hood, Texas 76544, Applicant, has applied for a Temporary Water Use Permit to change the use of 15 acre-feet out of the 12,000 acre-feet of water per year authorized by Certificate of Adjudication No. 12-2936 from domestic and municipal purposes to industrial purpose and divert and use that 15 acre-feet within a three year period from three diversion points on Cowhouse Creek upstream of Belton Lake, Brazos River Basin for use in Bell and Coryell Counties. The application was received on February 28, 2007. Additional information and fees were received on March 16 and 27, 2007. The application was accepted for filing and declared administratively complete on March 30, 2007. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below by May 14, 2007.

#### INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at [www.tceq.state.tx.us/comm\\_exec/cc/pub\\_notice.html](http://www.tceq.state.tx.us/comm_exec/cc/pub_notice.html) or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to TCEQ, Office of the Chief Clerk, MC 105, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at [www.tceq.state.tx.us](http://www.tceq.state.tx.us). Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200701568

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: April 25, 2007



Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on April 16, 2007, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Boraas Properties, Inc.; SOAH Docket No. 582-06-2363; TCEQ Docket No. 2005-1336-MWD-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Boraas Properties, Inc. on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to TCEQ, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Paul Munguía, Office of the Chief Clerk, (512) 239-3300.

TRD-200701569

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: April 25, 2007



### Texas Department of Insurance

#### Company Licensing

Application for admission to the State of Texas by QUALITY HEALTH PLANS, INC., a foreign health maintenance organization (HMO). The home office is in Holiday, Florida.

Application to change the name of COLUMBIA UNIVERSAL LIFE INSURANCE COMPANY to LIFESECURE INSURANCE COMPANY, a foreign life, accident and/or health company. The home office is in Brighton, Michigan.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200701570

Gene C. Jarmon

Chief Clerk and General Counsel

Texas Department of Insurance

Filed: April 25, 2007



#### Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application of AUTOMATED BENEFIT SERVICES, INC., a foreign third party administrator. The home office is OAK PARK, MICHIGAN.

Application of INFINISOURCE, INC., a foreign third party administrator. The home office is BATTLECREEK, MICHIGAN.

Any objections must be filed within 20 days after this notice is published in the *Texas Register*, addressed to the attention of Matt Ray, MC 107-1A, 333 Guadalupe, Austin, Texas 78701.

TRD-200701571

Gene C. Jarmon  
Chief Clerk and General Counsel  
Texas Department of Insurance  
Filed: April 25, 2007



## Notice of Public Hearing

The Commissioner of Insurance will hold a public hearing under Docket No. 2666 on May 14, 2007, at 10:00 a.m. in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street in Austin, Texas, to consider the Texas Windstorm Insurance Association's (TWIA) filing of proposed increases to the current maximum limits of liability for commercial and government buildings insured by TWIA. TWIA is requesting approval of changes in the liability limits from \$3,206,000 to \$5,000,000 for governmental and commercial buildings and for corporeal movable property.

This notice is made pursuant to the Texas Insurance Code Section 2210.504. Section 2210.502(c) authorizes the TWIA board of directors to propose increases in the liability limits, which are additional to the statutorily authorized annual increases for inflation, as the board determines necessary to implement the purposes of Chapter 2210. Section 2210.504 requires notification and a hearing prior to the Commissioner's approval, disapproval, or modification of TWIA's proposed adjustments to the liability limits submitted pursuant to Section 2210.502(c).

With regards to the submitted request, the Commissioner of Insurance requests the petitioner to provide information, given the current funding structure for TWIA, on: the current concentration of risk of TWIA; changes to the concentration of risk due to the proposed increase in liability limits, if any; what effects, if any, are projected to the State, TWIA, and TWIA Policyholders due to the proposed increased liability limits; what benefits of the proposed increase in liability limits will be provided to governmental and public structures, if any, giving emphasis to public schools in the affected catastrophe areas; and any changes in underwriting procedures needed to enable such benefits for public schools.

A copy of TWIA's request is available for review in the Office of the Chief Clerk, Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104. To request a copy of the petition, contact Sylvia Gutierrez at (512) 463-6327 (refer to Reference No. P-0307-02).

TRD-200701553  
Gene C. Jarmon  
Chief Clerk and General Counsel  
Texas Department of Insurance  
Filed: April 24, 2007



## Texas Lottery Commission

### Instant Game Number 795 "Golden Riches"

#### 1.0 Name and Style of Game.

A. The name of Instant Game No. 795 is "GOLDEN RICHES". The play style for GAME 1 is "key number match with auto win". The play style for GAME 2 is "beat score". The play style for GAME 3 is "three in a line".

#### 1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 795 shall be \$10.00 per ticket.

#### 1.2 Definitions in Instant Game No. 795.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 10X SYMBOL, BAR SYMBOL, COIN SYMBOL, CROWN SYMBOL, DIAMOND SYMBOL, POT OF GOLD SYMBOL, \$10.00, \$20.00, \$50.00, \$100, \$200, \$500, \$1,000, \$2,500 or \$100,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 795 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
10X SYMBOL	WINX10
BAR SYMBOL	
COIN SYMBOL	
CROWN SYMBOL	
DIAMOND SYMBOL	
POT OF GOLD SYMBOL	
\$10.00	TEN\$

<b>\$20.00</b>	<b>TWENTY</b>
<b>\$50.00</b>	<b>FIFTY</b>
<b>\$100</b>	<b>ONE HUND</b>
<b>\$200</b>	<b>TWO HUND</b>
<b>\$500</b>	<b>FIV HUND</b>
<b>\$1,000</b>	<b>ONE THOU</b>
<b>\$2,500</b>	<b>TWF HUND</b>
<b>\$100,000</b>	<b>HUN THOU</b>

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for val-

idation purposes and cannot be used to play the game. The possible validation codes are:

**Figure 2: GAME NO. 795 - 1.2E**

<b>CODE</b>	<b>PRIZE</b>
<b>TEN</b>	<b>\$10.00</b>
<b>TWN</b>	<b>\$20.00</b>

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of \$10.00 or \$20.00.

H. Mid-Tier Prize - A prize of \$50.00, \$100, \$200 or \$500.

I. High-Tier Prize - A prize of \$1,000, \$2,500 or \$100,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (795), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 050 within each pack. The format will be: 795-0000001-001.

L. Pack - A pack of "GOLDEN RICHES" Instant Game tickets contains 50 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket back 050 will be exposed on one side of the pack and ticket 001 on the other side.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government

Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "GOLDEN RICHES" Instant Game No. 795 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "GOLDEN RICHES" Instant Game is determined once the latex on the ticket is scratched off to expose 40 (forty) Play Symbols. For GAME 1, if a player matches any of YOUR NUMBERS play symbols to any of the WINNING NUMBERS play symbols, the player wins the PRIZE shown for that number. If a player reveals a "10x" play symbol, the player wins 10 TIMES THE PRIZE shown for that symbol instantly. For GAME 2, if a player's YOUR number play symbol beats THEIR number play symbol within the same row, the player wins the PRIZE shown for that row. For GAME 3, if a player reveals three (3) "pot of gold" play symbols in any one row, column or diagonal, the player wins the prize shown. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

#### 2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 40 (forty) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 40 (forty) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 40 (forty) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 40 (forty) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

## 2.2 Programmed Game Parameters.

- A. Consecutive non-winning tickets will not have identical play data, spot for spot.
- B. The \$100,000 prize symbol will appear at least once on every ticket unless otherwise restricted.
- C. GAME 1: Non-winning prize symbols will never be the same as the winning prize symbol(s).
- D. GAME 1: The "10x" (win x 10) play symbol will only appear on intended winning tickets as dictated by the prize structure.
- E. GAME 1: No duplicate WINNING NUMBERS play symbols on a ticket.
- F. GAME 1: No duplicate non-winning YOUR NUMBERS play symbols on a ticket.
- G. GAME 1: No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e. 10 and \$10).
- H. GAME 1: No more than three matching non-winning prize symbols.
- I. GAME 2: No duplicate YOUR number play symbols on a ticket.
- J. GAME 2: No duplicate THEIR number play symbols on a ticket.
- K. GAME 2: No duplicate non-winning prize symbols in this game.
- L. GAME 2: No ties between YOUR number play symbol and THEIR number play symbol within a row.
- M. GAME 3: There will be no three or more matching play symbols other than the pot of gold play symbol.
- N. GAME 3: There will be four or five pot of gold play symbols on every ticket.
- O. GAME 3: This game may only have one occurrence of three pot of gold play symbols appearing in a row, column or diagonal.

## 2.3 Procedure for Claiming Prizes.

A. To claim a "GOLDEN RICHES" Instant Game prize of \$10.00, \$20.00, \$50.00, \$100, \$200 or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$50.00, \$100, \$200 or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "GOLDEN RICHES" Instant Game prize of \$1,000, \$2,500 or \$100,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "GOLDEN RICHES" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General;
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the

"GOLDEN RICHES" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "GOLDEN RICHES" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 4,080,000 tickets in the Instant Game No. 795. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 795 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$10	734,400	5.56
\$20	306,000	13.33
\$50	81,600	50.00
\$100	54,400	75.00
\$200	8,840	461.54
\$500	4,148	983.61
\$1,000	306	13,333.33
\$2,500	170	24,000.00
\$100,000	10	408,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 3.43. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 795 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 795, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200701538

Kimberly L. Kiplin

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#### Instant Game Number 818 "Run the Table"

##### 1.0 Name and Style of Game.

A. The name of Instant Game No. 818 is "RUN THE TABLE". The play style for GAME 1 is "beat score with doubler". The play style for GAME 2 is "beat score with doubler". The play style for GAME 3 is "beat score with doubler".

##### 1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 818 shall be \$3.00 per ticket.

##### 1.2 Definitions in Instant Game No. 818.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 2 CARD SYMBOL, 3 CARD SYMBOL, 4 CARD SYMBOL, 5 CARD SYMBOL, 6 CARD SYMBOL, 7 CARD SYMBOL, 8 CARD SYMBOL, 9 CARD SYMBOL, 10 CARD SYMBOL, J CARD SYMBOL, Q CARD SYMBOL, K CARD SYMBOL, A CARD SYMBOL, CROWN CARD SYMBOL, JOKER CARD SYMBOL, \$3.00, \$5.00, \$10.00, \$15.00, \$20.00, \$30.00, \$50.00, \$100, \$1,000, and \$35,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:



Figure 1: GAME NO. 818 - 1.2D

PLAY SYMBOL	CAPTION
2	TWO
3	THREE
4	FOUR
5	FIVE
6	SIX
7	SEVEN
8	EIGHT
9	NINE
10	TEN
J CARD SYMBOL	JACK
Q CARD SYMBOL	QUEEN
K CARD SYMBOL	KING
A CARD SYMBOL	ACE
CROWN SYMBOL	DOUBLE
JOKER SYMBOL	DOUBLE
\$3.00	THREE\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$15.00	FIFTN
\$20.00	TWENTY
\$30.00	THIRTY
\$50.00	FIFTY
\$100	ONE HUN
\$1,000	ONE THOU
\$35,000	35 THOU

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for val-

idation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 818 - 1.2E

CODE	PRIZE
THR	\$3.00
FIV	\$5.00
TEN	\$10.00
FTN	\$15.00
TWN	\$20.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number

is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

G. Low-Tier Prize - A prize of \$3.00, \$5.00, \$10.00, \$15.00 or \$20.00.

H. Mid-Tier Prize - A prize of \$30.00, \$50.00 or \$100.

I. High-Tier Prize - A prize of \$1,000 or \$35,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (818), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 818-0000001-001.

L. Pack - A pack of "RUN THE TABLE" Instant Game tickets contains 125 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the pack; the back of ticket 125 will be revealed on the back of the pack. All packs will be tightly shrink-wrapped. There will be on breaks between the tickets in a pack. Every other book will reverse i.e., reverse order will be: the back of ticket 001 will be shown on the front of the pack and the front of ticket 125 will be shown on the back of the pack.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "RUN THE TABLE" Instant Game No. 818 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "RUN THE TABLE" Instant Game is determined once the latex on the ticket is scratched off to expose 32 (thirty-two) Play Symbols. For the Game 1, if a player's YOUR CARD number play symbol is greater than the DEALER'S LOW CARD play symbol and less than the DEALER'S HIGH CARD play symbol within a HAND, the player wins PRIZE for that HAND. If a player's YOUR CARD play symbol is a "CROWN" play symbol, the player wins DOUBLE the PRIZE for that HAND. Aces are high. For Game 2, if a player's YOUR CARD play symbol is higher than THEIR CARD play symbol within a HAND, the player wins PRIZE for that HAND. If a player's YOUR CARD play symbol is a "JOKER" play symbol, the player wins DOUBLE the PRIZE for that HAND. Aces are high. For Game 3, if the player's total for any single HAND is higher than the total of the DEALER'S HAND, the player wins PRIZE for that HAND. If the total for any single HAND equals "21", the player wins DOUBLE the PRIZE for that HAND. J, Q, K = 10. A = 11. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

#### 2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 32 (thirty-two) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 32 (thirty-two) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 32 (thirty-two) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 32 (thirty-two) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another un-

played ticket in that Instant Game (or a ticket of equivalent sales price from any other current Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

## 2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets within a book will not have identical patterns.

B. A ticket can win up to 9 times as indicated by the prize structure.

C. There will be at least 1 and no more than 2 mid/high tier winning tickets per pack, one of which will be a \$30 winner.

D. All winning and non-winning tickets will show a top-prize and second-prize symbol, with the exception of the eight (8) and nine (9) times wins.

E. GAME 1: A player can win up to three (3) times in this area.

F. GAME 1: There will never be an identical CARD in any HAND (i.e. the YOUR CARD, DEALER'S LOW CARD, and/or DEALER'S HIGH CARD will never be the same in any HAND).

G. GAME 1: The DEALER'S LOW CARD will never have a greater value than the DEALER'S HIGH CARD and the DEALER'S HIGH CARD will never have a lower value than the DEALER'S LOW CARD.

H. GAME 1: Non-winning tickets will never display a YOUR CARD that is higher in value than the DEALER'S LOW CARD and lower in value than the DEALER'S HIGH CARD in any HAND.

I. GAME 1: Winning HANDS will appear randomly and approximately even over the three (3) HANDS on a single ticket.

J. GAME 1: Winning and non-winning tickets will display all card symbols in random and approximately equal percentages over the three (3) HANDS, with respect to other restrictions.

K. GAME 1: Non-winning games will never display three (3) or more identical symbols or prize amounts over the entire play area.

L. GAME 1: On all tickets, winning or non-winning, the YOUR CARD will never be an ACE or a TWO.

M. GAME 1: Non-winning play and prize symbols will never match a winning symbol in this game.

N. GAME 1: On all tickets, winning or non-winning, the DEALER'S LOW CARD will be at least two cards lower than the DEALER'S HIGH CARD (i.e. if the DEALER'S LOW CARD is a nine, the DEALER'S HIGH CARD will be a Jack or greater).

O. GAME 1: A "Crown" symbol will only appear as a YOUR CARD and will only appear on winning tickets.

P. GAME 1: The "Crown" symbol will win DOUBLE the prize for that HAND and will appear as per the prize structure.

Q. GAME 2: A card symbol will not appear more than once in this play area.

R. GAME 2: The card symbols will be used approximately evenly and randomly, with respect to other restrictions.

S. GAME 2: Ace is considered to be a high card only.

T. GAME 2: Players can win up to three (3) times in this play area.

U. GAME 2: A HAND will win when the YOUR CARD is higher in value than the THEIR CARD.

V. GAME 2: The "2" card symbol will never appear as a YOUR CARD.

W. GAME 2: A non-winning prize will not appear more than once on winning and non-winning tickets.

X. GAME 2: There will be no ties between the YOUR CARD symbol and the THEIR CARD symbol in a game.

Y. GAME 2: The ACE card symbol will never appear as a THEIR CARD.

Z. GAME 2: The same two card values will not appear together, in any order, in more than one HAND.

AA. GAME 2: The "Joker" symbol will win DOUBLE the prize for that HAND and will appear as per the prize structure.

BB. GAME 3: Players can win up to three (3) times in this area.

CC. GAME 3: The HAND 1, HAND 2 and HAND 3 card symbols, DEALER'S HAND card symbols and prize symbols will be used randomly and evenly over both winning and non-winning tickets, with respect to the other restrictions.

DD. GAME 3: Jack, Queen, and King will have a point value of ten (10). Ace will have a point value of eleven (11).

EE. GAME 3: There will be no ties between the DEALER'S HAND and any of HAND 1, HAND 2 or HAND 3.

FF. GAME 3: A score of twenty-one (21) or more will never appear in the DEALER'S HAND.

GG. GAME 3: A HAND with a value of twenty-one (21) will win DOUBLE the prize for that HAND, and will win as per the prize structure.

HH. GAME 3: A range of scores from twelve (12) to twenty-one (21) will be used for HAND 1, HAND 2 and HAND 3.

II. GAME 3: HAND 1, HAND 2 and HAND 3 will consist of two (2) cards.

JJ. GAME 3: The DEALER'S HAND will consist of two (2) cards.

KK. GAME 3: HAND 1, HAND 2 or HAND 3 will never consist of two (2) Aces.

LL. GAME 3: No card will appear more than twice in this play area.

MM. GAME 3: Doubles (2 of the same card symbol in the same hand) on a single HAND 1, HAND 2, HAND 3 and DEALER'S HAND are allowable, with respect to other restrictions.

NN. GAME 3: Non-winning tickets will never contain the value twenty-one (21) in the entire play area.

## 2.3 Procedure for Claiming Prizes.

A. To claim a "RUN THE TABLE" Instant Game prize of \$3.00, \$5.00, \$10.00, \$15.00, \$20.00, \$30.00, \$50.00 or \$100, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$30.00, \$50.00 or \$100 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "RUN THE TABLE" Instant Game prize of \$1,000 or \$35,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "RUN THE TABLE" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General;
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "RUN THE TABLE" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "RUN THE TABLE" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 5,040,000 tickets in the Instant Game No. 818. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 818 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$3	624,960	8.06
\$5	352,800	14.29
\$10	70,560	71.43
\$15	110,880	45.45
\$20	50,400	100.00
\$30	52,920	95.24
\$50	17,430	289.16
\$100	840	6,000.00
\$1,000	22	229,090.91
\$35,000	7	720,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 3.93. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 818 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 818, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

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Kimberly L. Kiplin  
General Counsel  
Texas Lottery Commission  
Filed: April 19, 2007



#### Instant Game Number 838 "Magnificent 7's"

##### 1.0 Name and Style of Game.

A. The name of Instant Game No. 838 is "MAGNIFICENT 7'S". The play style for Game 1 is "key number match with auto win". The play style for Game 2 is "three in a line with doubler". The play style for Game 3 is "match 3 of 6 with doubler". The play style for Game 4 is "key symbol match". The play style for ADD UP is "add up".

##### 1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 838 shall be \$7.00 per ticket.

##### 1.2 Definitions in Instant Game No. 838.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: \$7.00, \$14.00, \$21.00, \$35.00, \$70.00, \$350, \$700, \$7,000, \$75,000, 01, 02, 03, 04, 05, 06, 08, 09, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, 30, 7 SYMBOL, 1 SYMBOL, 2 SYMBOL, 3 SYMBOL, 4 SYMBOL, 5 SYMBOL, 6 SYMBOL, 8 SYMBOL, 9 SYMBOL, \$\$ SYMBOL, CACTUS SYMBOL, BRANDING IRON SYMBOL, BLAZING SUN SYMBOL, MAP SCROLL SYMBOL, STACK OF CASH SYMBOL, COWBOY BOOT SYMBOL, GOLD COIN SYMBOL, COVERED WAGON SYMBOL, SPURS SYMBOL, LASSO SYMBOL, COWBOY HAT SYMBOL, 1, 2, 3, 4, 5 or 6.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 838 - 1.2D

PLAY SYMBOL	CAPTION
\$7.00	SEVEN\$
\$14.00	FOURTEEN
\$21.00	TWY ONE
\$35.00	THY FIV
\$70.00	SVTY
\$350	THR FTY
\$700	SVN HUN
\$7,000	SVN THOU
\$75,000	75 THOU
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FON
15	FTN
16	SXT
18	EGN
19	NTN
20	TWY
21	TNE
22	TTW
23	TTH
24	TFR
25	TFV
26	TSX
28	TEI
29	TNI
30	THY
7 SYMBOL	WIN
1 SYMBOL	
2 SYMBOL	
3 SYMBOL	
4 SYMBOL	
5 SYMBOL	
6 SYMBOL	
8 SYMBOL	
9 SYMBOL	
\$\$ SYMBOL	

CACTUS SYMBOL	CACTUS
BRANDING IRON SYMBOL	IRON
BLAZING SUN SYMBOL	SUN
MAP SCROLL SYMBOL	MAP
STACK OF CASH SYMBOL	CASH
COWBOY BOOT SYMBOL	BOOT
GOLD COIN SYMBOL	COIN
COVERED WAGON SYMBOL	WAGON
SPURS SYMBOL	SPURS
LASSO SYMBOL	LASSO
COWBOY HAT SYMBOL	HAT
1	ONE
2	TWO
3	THREE
4	FOUR
5	FIVE
6	SIX

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for val-

idation purposes and cannot be used to play the game. The possible validation codes are:

**Figure 2: GAME NO. 838 - 1.2E**

CODE	PRIZE
SVN	\$7.00
FRN	\$14.00
TWE	\$21.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of \$7.00, \$14.00 or \$21.00.

H. Mid-Tier Prize - A prize of \$35.00, \$70.00 or \$350.

I. High-Tier Prize - A prize of \$700, \$7,000 or \$75,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (838), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 838-0000001-001.

L. Pack - A pack of "MAGNIFICENT 7'S" Instant Game tickets contains 75 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the pack; the back of ticket 075 will be revealed on the back of the pack. All packs will be tightly shrink-wrapped. There will be no breaks between the tickets in a pack. Every other book will reverse i.e., reverse order will be: the back of ticket 001 will be shown on the front of the pack and the front of ticket 075 will be shown on the back of the pack.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "MAGNIFICENT 7'S" Instant Game No. 838 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in

Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "MAGNIFICENT 7'S" Instant Game is determined once the latex on the ticket is scratched off to expose 35 (thirty-five) Play Symbols. For Game 1, if a player matches either of YOUR NUMBERS play symbols to the LUCKY NUMBER play symbol, the player wins the PRIZE shown below that number(s). If a player reveals a "7" play symbol, the player wins PRIZE shown instantly. For Game 2, if a player reveals 3 (three) "7"s in any one row, column or diagonal, the player wins the PRIZE shown. If a player reveals a "\$\$" play symbol, the player wins DOUBLE the PRIZE shown instantly. For Game 3, if a player reveals 3 (three) matching prize amounts, the player wins that amount. If a player reveals 2 (two) matching prize amounts plus a "moneybag" play symbol, the player wins DOUBLE that amount. For Game 4, if a player matches any of YOUR SYMBOLS play symbols to either WINNING SYMBOL play symbol, the player wins the PRIZE shown below that symbol(s). For Game ADD UP, the player scratches the entire area and if the 2 (two) numbers revealed total "7", the player wins \$70 instantly. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

#### 2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 35 (thirty-five) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 35 (thirty-five) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 35 (thirty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 35 (thirty-five) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

#### 2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets within a book will not have identical patterns.

B. GAME 1: This play area consists of two (2) YOUR NUMBERS and one (1) LUCKY NUMBER.

C. GAME 1: Players can win twice in this play area.

D. GAME 1: The "7" symbol will never appear as a LUCKY NUMBER.

E. GAME 1: Non-winning tickets will not contain two (2) identical YOUR NUMBERS.

F. GAME 1: Non-winning prize symbols will always be unique.

G. GAME 1: A winning prize symbol will never be the same as a non-winning prize symbols within this play area.

H. GAME 1: Non-winning tickets will never contain the "7" symbol.

I. GAME 1: Tickets will only win with the "7" symbol as indicated on the prize structure.

J. GAME 2: Players can win once in this play area.

K. GAME 2: No ticket will contain three (3) or more of a kind other than the "7" symbol.

L. GAME 2: The "\$\$" symbol and three (3) "7" symbols cannot appear in the same game.

M. GAME 2: Tickets will not contain four (4) "7" symbols in all 4 corners.

N. GAME 2: The "\$\$" symbol will win two (2) times the prize amount shown and will win as per the prize structure.



O. GAME 2: On winning tickets, wins should appear equally among the three (3) types of wins (row, column, diagonal).

P. There will never be a "\$\$" symbol in the same line as two "7" symbols.

Q. GAME 3: Players can win once in this play area.

R. GAME 3: There will never be more than one (1) set of three (3) matching prize amounts on a single ticket.

S. GAME 3: There will never be more than three (3) matching prize amounts on a single ticket.

T. GAME 3: On winning tickets, two (2) matching symbols and the "moneybag" play symbol will win two (2) times the prize amount shown and will win as per the prize structure.

U. GAME 3: There will never be more than one (1) "moneybag" play symbol per ticket.

V. GAME 3: On non-winning tickets, the "moneybag" play symbol may appear when all play symbols are unique.

W. GAME 3: The "moneybag" play symbol will never appear on a ticket which contains three (3) matching play symbols.

X. GAME 3: No more than two (2) pairs of matching play symbols will appear on a ticket which does not contain a "moneybag" symbol.

Y. GAME 3: No more than one (1) pair of matching play symbols will appear on a ticket containing a "moneybag" symbol.

Z. GAME 4: Players can win up to five (5) times in this play area.

AA. GAME 4: No more than two (2) matching non-winning prize symbols on a ticket.

BB. GAME 4: No more than two (2) matching non-winning YOUR SYMBOLS on a ticket.

CC. GAME 4: Non-winning prize symbols will not match a winning prize symbol on a ticket.

DD. GAME 4: No duplicate WINNING SYMBOLS will appear on a ticket.

EE. ADD-UP: Players can win once in this play area.

FF. ADD-UP: On winning tickets, the two (2) play symbols in this play area will total "7".

GG. ADD-UP: The two (2) symbols on non-winning games will never total "7" in this play area.

HH. ADD-UP: Winning tickets will only win as indicated on the prize structure.

### 2.3 Procedure for Claiming Prizes.

A. To claim a "MAGNIFICENT 7'S" Instant Game prize of \$7.00, \$14.00, \$21.00, \$35.00, \$70.00 or \$350, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$35.00, \$70.00 or \$350 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly.

A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "MAGNIFICENT 7'S" Instant Game prize of \$700, \$7,000 or \$75,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "MAGNIFICENT 7'S" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "MAGNIFICENT 7'S" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "MAGNIFICENT 7'S" Instant Game, the

Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by

the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 5,040,000 tickets in the Instant Game No. 838. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 838 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$7	655,200	7.69
\$14	520,800	9.68
\$21	151,200	33.33
\$35	60,900	82.76
\$70	52,584	95.85
\$350	6,300	800.00
\$700	336	15,000.00
\$7,000	12	420,000.00
\$75,000	8	630,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 3.48. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 838 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 838, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200701475

Kimberly L. Kiplin  
General Counsel  
Texas Lottery Commission  
Filed: April 19, 2007

## Panhandle Regional Planning Commission

### Legal Notice

The Panhandle Regional Planning Commission (PRPC) is seeking proposals to purchase a multi-site IP telephony system for the Panhandle WorkSource office(s) of the Texas Panhandle. A copy of the Request for Proposals can be obtained Monday through Friday, 8:00 a.m. to 5:00 p.m., at 415 West Eighth Ave., Amarillo, Texas 79101 or by contacting Leslie Hardin, PRPC's Workforce Development Facilities Coordinator, at (806) 372-3381 or lhardin@theprpc.org.

A Proposer's Conference will be held on Thursday, May 10, 2007 at 2:00 p.m., in the 3rd Floor Conference Room of PRPC. Proposals must be received at PRPC by 3:00 p.m. on May 31, 2007.

TRD-200701536

Leslie Hardin

Facilities Coordinator

Panhandle Regional Planning Commission

Filed: April 23, 2007



## Public Utility Commission of Texas

### Notice of Application for Amendment to Certificated Service Area Boundary

Notice is given to the public of an application filed on April 20, 2007, with the Public Utility Commission of Texas, for an amendment to a certificated service area boundary in Jones County, Texas.

Docket Style and Number: Application of AT&T Texas for an Amendment to a Certificate of Convenience and Necessity to Amend the Service Area Boundary between the Anson and Stamford Exchanges Docket Number 34184.

The Application: The minor boundary amendment is being filed to realign the boundary between AT&T Texas's Anson and Stamford exchanges.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by May 11, 2007, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 34184.

TRD-200701551

Adriana Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: April 24, 2007



### Notice of Application for Transfer of Responsibility for Administration of Nuclear Decommissioning Trust Funds

Notice is given to the public of an application for transfer of responsibility for administration of nuclear decommissioning trust funds with the Public Utility Commission of Texas on April 19, 2007, pursuant to the Public Utility Regulatory Act, Texas Utilities Code Annotated §§14.001, 14.002, 39.205 (Vernon 1998 & Supp. 2006) (PURA).

Docket Style and Number: Application of NRG South Texas, LP and AEP Texas Central Company for Transfer of Responsibility for Administration of Nuclear Decommissioning Trust Funds, Docket Number 34171.

The Application: NRG South Texas, LP and AEP Texas Central Company filed an application requesting: 1) the Commission transfer to NRG South Texas, LP, the sole responsibility for administering the funds for the nuclear decommissioning trust related to the 13.2% undivided interest in the South Texas Project Electric Generating Station that NRG acquired from AEP Texas Central Company in 2005; and 2) the Commission approve the form of the proposed Amended and Restated Decommissioning Funds Collection Agreement between NRG South Texas, LP and AEP Texas Central Company.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing-and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All correspondence should refer to Docket Number 34171.

TRD-200701505

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: April 20, 2007



### Notice of Petition for Expanded Local Calling Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of a petition on March 12, 2007, for expanded local calling service (ELCS), pursuant to Chapter 55, Subchapter C of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Project Title and Number: Petition for Expanded Local Calling Service from the Ransom Canyon Exchange to the Exchanges of Brownfield, Idalou, Slaton, Wolfforth, and Woodrow, Project Number 33980.

The petitioners in the Ransom Canyon exchange request ELCS to the exchanges of Brownfield, Idalou, Slaton, Wolfforth, and Woodrow.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than May 16, 2007. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2789. All comments should reference Project Number 33980.

TRD-200701550

Adriana Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: April 24, 2007



## Texas Department of Transportation

### Public Notice - Aviation

Pursuant to Transportation Code, §21.111, and Title 43, Texas Administrative Code, §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects.

For information regarding actions and times for aviation public hearings, please go to the following web site:

[www.txdot.gov/about\\_us/public\\_hearings\\_and\\_meetings/aviation.htm](http://www.txdot.gov/about_us/public_hearings_and_meetings/aviation.htm)

Or visit [www.txdot.gov](http://www.txdot.gov), click on Citizen, click on Public Hearings, and then click on Aviation.

Or contact Joyce Moulton, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4501 or 1-800-68-PILOT.

TRD-200701552

Joanne Wright  
Associate General Counsel  
Texas Department of Transportation  
Filed: April 24, 2007

◆ ◆ ◆  
**Public Notice - Public Hearing for Proposed Sulphur River  
Regional Mobility Authority**

The Texas Department of Transportation (department) will conduct a public hearing to receive comments on the proposed formation of the Sulphur River Regional Mobility Authority (SURREMA) by Delta County, Hopkins County, Hunt County, and Lamar County (the "Counties"). On February 1, 2007, the Counties filed a petition requesting authorization from the Texas Transportation Commission to form the SURREMA. As proposed, the SURREMA would encompass the boundaries of the Counties, and would be governed by a board of directors of nine members. Two members would be appointed by the Delta County Commissioners Court, one specifically representing the city of Cooper's interests. Two members would be appointed by the Hopkins County Commissioners Court, one specifically representing the city of Sulphur Springs' interests. Two members would be appointed by the Hunt County Commissioners Court, one specifically representing the city of Commerce's interests. Two members would also be appointed by the Lamar County Commissioners Court, one specifically representing the city of Paris' interests. In addition to the board members appointed by the Counties, the presiding officer of the board will be appointed by the Governor.

SURREMA's initial project will be the completion of the widening of SH 24, from a two lane to a four lane divided facility in Delta County.

Pursuant to Title 43, Texas Administrative Code, §26.12, the department will hold a public hearing on the date, time, and location indicated to receive public comments and assess the level of public support concerning the proposed SURREMA:

DATE: May 24, 2007

TIME: 5:30 PM

LOCATION: Delta County Civic Center located at 201 East Bonham Street, Cooper, Texas 75432

All interested citizens are invited to attend the public hearing and to provide input. Those desiring to make official comments may register starting at 5:30 p.m. on the day of the hearing. Oral and written comments may be presented at the public hearing, or written comments may be submitted by mail. To be included in the official record of the public hearing, written comments must be received by 5:00 p.m. on June 4, 2007. Written comments should be mailed to: Doug Woodall, P.E., Director of Turnpike Planning and Development, Texas Turnpike Authority Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483.

Persons with disabilities who plan to attend the public hearing and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print, or Braille, are requested to contact Mayor Scott Stegall, at the city of Cooper at (903) 517-8637 at least two business days prior to the hearing, so that appropriate arrangements can be made.

A copy of the Counties' petition to the Texas Transportation Commission is available for inspection at the offices of the Lamar County

Courthouse, 119 North Main #201, Paris, Texas 75460, the Hunt County Courthouse, 2500 Lee, Greenville, Texas 75402, the Hopkins County Courthouse, 118 Church Street, Sulphur Springs, Texas 75482, and the Delta County Courthouse, 200 West Dallas Avenue, Cooper, Texas 75432.

TRD-200701566  
Joanne Wright  
Associate General Counsel  
Texas Department of Transportation  
Filed: April 25, 2007

◆ ◆ ◆  
**Waller County**

**Request for Comments and Proposals: Additional Medicaid  
Beds**

Notice of Intent to Submit Request to Department of Aging and Disability Services to contract for Additional Medicaid Nursing Home Beds in Waller County.

The Commissioners Court of Waller County, pursuant to the Texas Administrative Code, hereby gives notice of its intent to request a Department of Aging and Disability Services contract for additional nursing home beds under the state Medicaid program in Waller County with regards to Texas Administrative Code on rural county waiver.

The Commissioners Court hereby requests that interested parties submit comments on whether the request should be made. Further, the Commissioners Court requests proposals from persons interested in providing additional Medicaid beds in the county, including persons providing Medicaid beds in a nursing home facility with a high occupancy rate.

Interested parties must forward comments or proposals to the Waller County Auditor's Office, 836 Austin Street Room 221, Hempstead, Texas 77445, to be received no later than June 4, 2007 at 10:00 a.m. Proposals shall be discussed in open Commissioners Court on June 12, 2007 at 9:00 a.m. in the County Courtroom, Hempstead, Texas.

If the Commissioners Court determines to proceed with a request after considering all comments and proposals received, it may recommend that the Department of Aging and Disability Services contract with a specific nursing facility that submitted a proposal. In making its decisions, the Commissioners Court must consider:

1. The demographic and economic needs of the county;
2. The quality of existing nursing facility services under the state Medicaid program in the county;
3. The quality of the proposals submitted; and
4. The degree of community support for additional nursing facility services.

TRD-200701562  
Owen Ralston  
Waller County Judge  
Waller County  
Filed: April 24, 2007

### How to Use the Texas Register

**Information Available:** The 14 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

**Governor** - Appointments, executive orders, and proclamations.

**Attorney General** - summaries of requests for opinions, opinions, and open records decisions.

**Secretary of State** - opinions based on the election laws.

**Texas Ethics Commission** - summaries of requests for opinions and opinions.

**Emergency Rules** - sections adopted by state agencies on an emergency basis.

**Proposed Rules** - sections proposed for adoption.

**Withdrawn Rules** - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

**Adopted Rules** - sections adopted following public comment period.

**Texas Department of Insurance Exempt Filings** - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

**Texas Department of Banking** - opinions and exempt rules filed by the Texas Department of Banking.

**Tables and Graphics** - graphic material from the proposed, emergency and adopted sections.

**Transferred Rules** - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

**In Addition** - miscellaneous information required to be published by statute or provided as a public service.

**Review of Agency Rules** - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

**How to Cite:** Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 30 (2005) is cited as follows: 30 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "30 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 30 TexReg 3."

**How to Research:** The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online through the Internet. The address is: <http://www.sos.state.tx.us>. The *Register* is available in an .html

version as well as a .pdf (portable document format) version through the Internet. For website subscription information, call the Texas Register at (800) 226-7199.

### Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

**How to Cite:** Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

**How to update:** To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Table of TAC Titles Affected*. The table is published cumulatively in the blue-cover quarterly indexes to the *Texas Register* (January 21, April 15, July 8, and October 7, 2005). If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with one or more *Texas Register* page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

*Part I. Texas Department of Human Services*

40 TAC §3.704.....950, 1820

The *Table of TAC Titles Affected* is cumulative for each volume of the *Texas Register* (calendar year).